No. 1460. 142 1253

Brf. of Rooker for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM, A. D. 1902.

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EDWARD E. BESSETTE,
Appellant,

vs.

W. B. CONKEY COMPANY,
Appellee.

APPELLANT'S BRIEF.

WILLIAM VELPEAU ROOKER,
Attorney for Appellant.

Burford Print. Indianapolis.

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vs.
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Appellee.

APPELLANT'S BRIEF.

I.

STATEMENT OF THE CASE.

This cause comes here on the certificate of the United States Circuit Court of Appeals for the Seventh Circuit. The questions of law upon which the Court of Appeals desires the advice and instruction of the Supreme Court are as follows:

"First: Whether the Circuit Court of Appeals has jurisdiction to review an order or judgment of a Circuit Court of the United

States, finding a person guilty of contempt for violation of an order of that court and imposing a fine for the contempt.

"Second: Whether the 'act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes,' approved March 3, 1891 (26 Stat. 826), authorizes a review by a Circuit Court of Appeals of a judgment or order of a Circuit Court of the United States, finding a person, not a party to the suit, guilty of contempt for violation of an order of that court made in such suit, and imposing a fine for such contempt.

"Third: Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by appeal.

"Fourth: Whether, if such review be sanctioned, by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by writ of error."

The appellant, Edward E. Bessette, respectfully asks this Honorable Court to consider the merits of the cause, as well as the questions of procedure. He affirms his entire innocence of any wrong doing and asserts that his appeal fairly presents these questions involving the liberty and rights of a citizen, viz.:

1. May a man who is entirely innocent of any wrong doing be denied the right of an Appellate Court's review of his conviction, solely because the method of his conviction was under the guise of a proceeding to punish for contempt?

2. May a man charged with and tried for one offense be convicted of and punished for a different offense, in one and the same proceeding?

These questions arise upon the appeal of Edward E. Bessette from a judgment of the United States Circuit Court for the District of Indiana, convicting Bessette of the contemptuous violation of a restraining order and fining him two hundred and fifty dollars.

Bessette was a citizen and resident of Illinois and was not a party to the restraining order, which he was charged with having violated.

On August 24, 1901, the W. B. Conkey Company, an Illinois corporation, filed its bill of complaint against J. Ackerman, Harry Alting, W. Armstrong, R. Barker, E. Bohaman, J. Brookover, J. Burns, James Burns, Arthur Chalmers, G. Collins, Gus Collins, John W. Davis, John DeRyke, James Doyle, John Dunlavey, L. Eckerman, J. Eldridge, Jerry Eldridge, L. Florence, Louis Florence, F. Foker, Floyd Foker, H. French, John F. Geckler, F. Grose, S. G. Grose, Charles Hagle, G. Hagle, F. Hart, Frank Hart, A. Heldman, C. Hipp, James Hoag, John Hoag, Theodore Hoberg, F. Hobery, A. Hock, John Holby, A. Holke, A. Hunt, W. Huston, G. Kling, O. Kohlstedt, W. Lamborn, W. Lloyd, L. J. Lockwood, George Long, E. Mason, Roy Mason, C. McCauley, F. McHugh, E. McKibben, M. Moyer, H. Olney, G. Pletcher, J. Rice, B. Rose, James A. Russell, William Rutz, I. J. Snyder, W. Sprik, G. Stackpole, F. C. Thorpe, G. Wangeman, J. Wayle, George Weisbacker, Ed Wells, Ed Wheed (alias Snitzer), R. Whitehead, Robert Whitehead, W. Whittaker, H. Wiley, Hugh Wiley, E. Wright, E. A. Wright, Kent Young, F. Yount. (Record, p. 2.)

The bill averred that the defendants were citizens and residents of Indiana. This averment was duly challenged on the ground that it was fraudulently made to give the court a jurisdiction to which it was not by law entitled. Of the seventy-seven defendants named in the bill, the marshal's return to the writ of subpoena shows that only ten were served with process, as follows: James A. Russell, J. S. Gross, John F. Geckler, Harry Alting, William Rutz, A. Hock, H. Olney, E. A. Wright, Ed Wheed (alias Snitzer) and Ed Wells. *Sixty-seven of the defendants were not served, and the marshal, in his return, stated that these sixty-seven were not served*

upon instructions from the plaintiff's attorneys. (Record, page 30.)

The bill further averred that the complainant had an office at Chicago, Illinois; that it had a factory at Hammond, Indiana, with the operation of which the defendants were unlawfully interfering. The fourth article of the bill was as follows:

"That your orator's factory is located in the outskirts of the city of Hammond and more than two miles distant from the residence portion of said city; that the streets and highways in the vicinity of said factory are not inhabited, or occupied as residences, or otherwise, and are not illuminated at dusk or at nighttime; that there are no factories, business houses or industries whatever located at, near or in the neighborhood or vicinity of said factory, and that there are not to exceed fifteen houses within a radius of one mile; that the streets and highways leading to said factory are chiefly, if not entirely, traveled by the people employed therein, who use the same in going to and from their homes and to and from said factory; that nearly all of your orator's employes have their homes and dwell in the city of Hammond, and when their daily work is done are compelled to go from the factory to their homes through lonely streets, roads and deserted places, which afford them no shelter or protection against sudden and unexpected attacks or assaults on the part of the defendants herein; that your orator's employes are peaceable, civil, industrious and well-behaved, and are not, and especially the women so employed, able to protect themselves against the assaults, intimidation, force, violence and threats employed by the defendants, as hereinafter set forth; nor are they willing to take the risks and hazards incident thereto, and that by reason thereof, if your orator is unable to protect said employes, they will quit, and are now quitting, its service." (Record, page 4.)

It was averred that on the 15th of August, 1901, the plaintiff was engaged in performing numerous contracts, whose terms are generally stated (Record, page 5), and the necessity for skilled labor was set forth. (Record, page 6.) It was averred that on or about said 15th day of August, the plaintiff was obliged to discharge the de-

fendant, Harry Alting, and a controversy with him was stated. (Record, page 6, Art. 7.) It was averred that when the plaintiff refused to reinstate Alting he made threats. An effort on the part of Alting to carry out his threats was described in the eighth article as follows:

"That said Harry Alting then and there proceeded to carry out and did, so far as he has been able to do, carry out and execute his said threats, *and in pursuance of such purpose and design, did then and there conspire and confederate with divers irresponsible persons residing in the city of Hammond* (but whose names are unknown to your orator, and who are not employed in, or in any wise connected with, or interested in your orator's factory, or business), to carry out, and did then and there, *acting in concert with said divers irresponsible persons,* by the use of force, threats and violence, cause thirty-eight of your orator's employes to quit your orator's service, on or about the 19th day of August, A. D. 1901; that said thirty-eight employes have now joined in said conspiracy with said Harry Alting *and his said confederates,* and have conspired and confederated with and are now conspiring, confederating with and acting in concert with said Harry Alting and his confederates, and with each other, to maliciously injure your orator, to break and mutilate its machinery located in said factory, to damage and destroy its products, and to cripple, injure and destroy its factory and business and to compel by threats, force and violence your orator's other employes to quit its service, and by an organized and concerted effort, and by the use of threats, force and violence, to prevent other persons from filling the places in your orator's service of those who have quit, or may hereafter quit its service; that said thirty-eight employes are by proper names made parties defendant to this bill of complaint." (Record, page 7, Art. 8.)

It was further averred that said Alting and said thirty-eight workmen were demanding reinstatement, and the impossibility of the plaintiff's complying with that demand was set forth in Article 9. The tenth article was given to the exculpation of the plaintiff, as follows:

"That your orator has no trouble or controversy, or difference with its employes concerning wages, or hours of work, or any other matter concerning their welfare and comfort; that all its employes except the defendants are satisfied and contented, and are desirous of remaining in your orator's service, and would and will continue therein, unless they are compelled to quit such service by reason of the force, threats, intimidation and violence practiced and pursued by the defendants and their said confederates; that many of your orator's employes have stated to its officers that unless your orator is able to, and will, afford them protection against such threats, violence and intimidation, they will be compelled to quit your orator's service and seek work elsewhere, and that many of said employes, by reason of such threats, force and violence and intimidation, are about to quit your orator's service, and that if said employes do so quit it will be extremely difficult to fill their places by reason of the fact that the city of Hammond is not a labor center, but more especially by reason of the fact that the defendants, acting in concert, are now actually engaged, by the use of threats, intimidation, violence and force, in compelling workmen, whose services have been secured by your orator to fill the places of said defendants, to refuse to enter your orator's factory and service, and that by reason of such threats, intimidation, force and violence your orator is unable to secure the services of other employes to fill the places left vacant by said conspiring defendants, and will continue to be unable to secure other employes, unless the defendants herein are restrained and enjoined as hereinafter prayed." (Record, page 9.)

It was averred that numerous persons who would ordinarily seek to do business with the plaintiff at its factory were deterred by fears of violence, and that the public authorities of the city of Hammond had refused to afford the necessary protection. (Record, page 9, Art. 11.)

It was averred that the defendants and the many hundreds of others confederating with them were insolvent; that the names of those confederating were unknown to the plaintiff, but leave was asked to make them parties to the bill and to charge them with apt

words when their names and identity should become known. (Equity Rule 57; Desty's Fed. Proc., page 1172, and cases cited.) The methods resorted to by the defendants and their confederates were further described in Article 14, as follows:

"That the defendants and their confederates, in carrying out their said conspiracy to destroy your orator's factory and wreck its business, act in large bodies, and not singly or in small squads; that said large bodies have been and are surrounding your orator's factory, and are patrolling the public highways and streets leading to said factory, and obstructing the same, and are assaulting your orator's employes with great physical violence and inflicting physical injuries upon such employes as they pass in and out of said factory, going to their work and returning to their homes; that the defendants and their confederates are watching the street cars and other conveyances running to and from said factory, and are lying in wait to threaten, terrorize and intimidate, and do threaten, terrorize, intimidate and assault, all persons carried by said street cars and other conveyances who seek employment in your orator's factory, or who wish to visit the same for the purpose of transacting business with your orator." (Record, pages 10-11.)

The damages sustained by the plaintiff were set forth in Article 15. (Record, page 11.)

The sixteenth article was a statement of unlawful acts on the part of the defendants, and it included the following:

"Your orator further shows that for many days last past said defendants and their confederates, acting in concert, have been and now are and will continue maliciously to patrol the streets, places and grounds adjoining, and in the immediate neighborhood of your orator's factory, in large groups, continuously using indecent language and vile epithets to the workmen and workwomen now employed in your orator's factory and to all persons seeking employment therein, with the express intention and desire, openly and violently expressed, to prevent your orator from carrying on its said business and from retaining its workmen in its factory and from securing new workmen to fill the places made vacant by said defendants, as herein set forth; that said defendants and their con-

federates have been and now are maintaining such patrol at said places and are by means thereof wilfully and maliciously obstructing and interfering with and intimidating, by the use of threats, force and violence, all persons who desire to visit your orator's factory for the purpose of transacting business, or for the purpose of entering into your orator's service or continuing in such service; and are wilfully and maliciously intimidating and threatening with bodily harm your orator's employes if they shall remain longer in its service, or continue to work at said factory, and are, by wilful and malicious threats of intimidation and violence and by use of violent and abusive language and vile and insulting epithets, endeavoring to cause and force your orator's employes to leave and quit its service and abandon their work in said factory; and that said defendants and their confederates have since the 15th day of August, A. D. 1901, and are now endeavoring, by the use of the means herein set forth and by publishing and circulating divers false and malicious reports of and concerning your orator and its said factory and business, and especially of and concerning the 500 or more women who are employed in said factory, to injure your orator's said business and to prevent your orator from continuing to carry on the same; that said defendants and their confederates have been and are now maintaining, by such patrols and pickets and by congregating in large bodies and conducting themselves in such a riotous and insulting way and manner, and by the use of such force and violence, a nuisance and obstruction to the public highway and public grounds at, near or in the neighborhood and adjacent to said factory, and a nuisance to your orator, to its real estate and factory located thereon, all to your orator's great injury, loss and damage." (Record, pages 11-12.)

THE SPECIFIC RELIEF PRAYED FOR IN THE BILL.

The prayer for relief includes that the defendants make answer, but not under oath, and that they, "and each of them and their confederates, and each and every of the servants, agents of the said defendants, and each of them, and any and all persons aiding and abetting said defendants, or any, or either of them, and all persons, now or hereafter, aiding and abetting said defendants, or any, or

either of them, and all persons, now or hereafter, confederating with or acting in concert with said defendants, or any or either of them, or their servants or agents, be restrained and enjoined from in any manner interfering with, hindering, obstructing or stopping any of the business of the plaintiff, or its agents, servants or employes in the operation of the factory and business of the plaintiff at Hammond, Indiana, or elsewhere, and also from entering upon the grounds, factory or premises of the plaintiff at Hammond or elsewhere, for the purpose of interfering with, hindering or obstructing the business of the plaintiff in any form or manner whatsoever, and also from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force or violence, any of the employes of the plaintiff to leave its service, and, also, from preventing or attempting to prevent any person or persons by threats, intimidation, force or violence from freely entering into the service and employment, or continuing in the service and employment, of the plaintiff, and, also, from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force or violence, the plaintiff, against its will or the will of its officers, employing or discharging any person whomsoever, and, also, from doing any act whatever in furtherance of any conspiracy or combination to restrain or obstruct either the plaintiff or any of its officers or employes in the free and uninterrupted and unhindered control and direction of the plaintiff's business and affairs, and, also, from ordering, directing, aiding, assisting or abetting in any manner whatsoever the commission of any or either of the acts aforesaid." (Record, pages 12-13.)

The prayer further asked relief upon these terms: "That the defendants be enjoined and restrained from congregating or being upon or about the sidewalks, streets, alleys, approaches or places

adjoining, or adjacent to, the factory and premises of the plaintiff at Hammond, or upon or about the factory or the grounds belonging to or used in connection therewith, for the purpose of intimidating or coercing the employes or preventing them from rendering their services or discharging their duties to the plaintiff, and from inducing or coercing, by threats, force or violence, any employe to leave the service or employment of the plaintiff, and from in any manner interfering with the plaintiff in carrying on its said business in the usual and ordinary way, and from in any manner interfering with or molesting any person or persons who may be employed or seeking employment with the plaintiff; that they be restrained and forbidden, either singly or in combination with others, from collecting in or about the approaches to the plaintiff's factory and buildings for the purpose of picketing or patrolling or guarding the streets, avenues, gates or approaches to the factory of the plaintiff, for the purpose of intimidating, threatening or coercing any employe or person, or persons, seeking employment with plaintiff, and from interfering with any employe in going to and from his daily work at the factory of plaintiff, and from going to the homes of the employes of the plaintiff for the purpose of intimidating or coercing any of them to leave the service or not to enter the service of the plaintiff." (Record, pages 13-14.)

The bill asked that the injunction be made perpetual, and that a restraining order be issued temporarily, and it prayed for a writ of subpoena. The bill was verified by Alfred Edwin Wilcox, on behalf of the plaintiff. (Record, page 15.)

Affidavits in support of the bill appear in the record (pages 16-28), made by Ernest H. Colvin, James Conkey, Anthony Warnimont, Mrs. Millie Holby, wife of the defendant, John Holby; Clayton C. Blass, Theodore F. Conkey, Harry J. Bender, Frank Kitzelman, Emma Schultz and Dana R. Hunt.

THE TEMPORARY RESTRAINING ORDER WHICH BESSETTE WAS CHARGED WITH HAVING VIOLATED.

On the 24th of August the Honorable John H. Baker, Judge, issued from the United States Circuit Court for the District of Indiana, a temporary restraining order, addressed to each of the above named defendants, and also to one L. J. Rockwood, and to "their confederates and each and every of the servants, agents of said defendants, and each of them, and any and all persons aiding and abetting said defendants, or any or either of them, and all persons now or hereafter aiding and abetting said defendants, or any or either of them, and all persons now or hereafter confederating with or acting with said defendants, or any or either of them, or their servants or agents." (Record, page 31.)

By the terms of the order the parties mentioned were restrained and enjoined—

(1) "From in any manner interfering with, hindering, obstructing or stopping any of the business of the plaintiff or its agents, servants or employes in the operation of the factory or business at Hammond or elsewhere;

(2) And from entering upon the grounds, factory or premises of the plaintiff, at Hammond or elsewhere, for the purpose of interfering with, hindering or obstructing the business of the plaintiff in any manner whatsoever;

(3) And from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force or violence, any of the employes of the plaintiff to refuse or fail to do their work or discharge their duties as such employes of the plaintiff;

(4) And from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force or violence, any employe to leave the service of the plaintiff;

(5) And from preventing, or attempting to prevent, any person, by threats, intimidation, force or violence, from freely entering into or continuing in the service of the plaintiff;

(6) And from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force or violence, the plaintiff from employing or discharging any person, and also from doing any act whatever in the furtherance of any conspiracy or combination to restrain or obstruct the plaintiff, or any of its officers or employes, in the free, uninterrupted and unhindered control or direction of the business and affairs of the plaintiff;

(7) And from ordering, directing, aiding, assisting, or abetting in any manner whatsoever, any person, or persons, to commit any or either of the acts aforesaid." (Record, pages 31-32.)

The restraining order then proceeds, *omitting all reference whatever to any confederate, agent, servant, or other person whomsoever, except "the said defendants,"* as follows:

"And that the said defendants, and each and all of them, be, and they are, and each of them is hereby, enjoined and restrained from congregating, or being upon or about the sidewalks, streets, alleys, approaches or places adjoining or adjacent to said factory and the premises of said complainant in the city of Hammond, or upon or about said factory or the grounds belonging to the same or used in connection therewith, for the purpose of intimidating the employes of said W. B. Conkey Company, or coercing said employes or any of its officers or agents, or preventing them, or any of them, from rendering their services or discharging their duties to said W. B. Conkey Company; and also from inducing or coercing, by threats, force or violence, any employes of said W. B. Conkey Company to leave the service or employment of said W. B. Conkey Company; and also from in any manner interfering with or molesting any person or persons who may be employed by, or who may be seeking employment with, said W. B. Conkey Company in the operation of its said factory and business; and also from in any manner interfering with said W. B. Conkey Company in carrying on its business in its usual and ordinary way.

"And that the said defendants, and each and all of them, be and they are, and each of them is, hereby restrained and forbidden, either singly or in combination with others, from collecting in and about the approaches to the factory and buildings of said W. B. Conkey Company for the purpose of picketing or patrolling or guarding the streets, avenues, gates and approaches to the property of the said W. B. Conkey Company, for the purpose of intimidating, threatening or coercing any of the employes of said W. B. Conkey Company, or any person or persons seeking employment with said W. B. Conkey Company; and also from interfering with the employes of said W. B. Conkey Company in going to and from their daily work at said factory of the complainant, W. B. Conkey Company.

"And that *said defendants, and each and all of them be, and they are, and each of them is hereby enjoined and restrained* from going, either singly or collectively, to the house of the employes of said W. B. Conkey Company, or any or either of them, for the purpose of intimidating or coercing any and all of said employes to leave the employment or service of said W. B. Conkey Company, or from entering into the employment or service of said W. B. Conkey Company, and, as well, from intimidating or threatening, in any manner, the wives and families of said employes, at their said homes or elsewhere." (Record, pages 32-33.)

SERVICE OF THE RESTRAINING ORDER ON CERTAIN OF THE DEFENDANTS.

The restraining order was issued on August 24th, and was served upon the following persons: Harry Alting, W. Armstrong, J. Brookover, James Burns, Arthur Chalmers, Gus Collins, John Dunlavey, John W. Davis, James Doyle, S. Grose, John F. Geckler, James Hoag, Frank Hart, Theodore Hoberg, John Hoag, C. Hipp, O. Holke, A. Heldman, A. Hock, G. Kling, W. Lloyd, F. McHugh, Roy Mason, M. Moyer, E. Mason, H. Olney, James A. Russell, William Rutz, L. J. Rockwood, J. Rice, W. Sprik, I. J. Snyder, C. Stackpole, F. C. Thorpe, C. Wangeman, E. A. Wright, Hugh Wiley, R. Whitehead, Ed Wells, Ed Wheed (alias Snitzer) and Kent Young.

Each of the above named persons, except L. J. Rockwood, was named as a defendant in the bill, but as to the following of them the writ of subpoena had not been served, because the plaintiff's counsel had directed otherwise: W. Armstrong, J. Bookover, James Burns, Arthur Chalmers, Gus Collins, John Dunlavey, John W. Davis, James Doyle, James Hoag, Frank Hart, Theodore Hoberg, John Hoag, C. Hipp, O. Holke, A. Heldman, G. Kling, W. Lloyd, F. McHugh, Roy Mason, M. Moyer, E. Mason, J. Rice, W. Sprik, I. J. Snyder, C. Stackpole, F. C. Thorpe, C. Wangeman, Hugh Wiley, R. Whitehead and Kent Young. (Record, page 33.) Of the seventy-seven defendants named in the bill, only ten were served with both the subpoena and the restraining order. The ten thus served were: Harry Alting, S. Grose, John F. Geckler, A. Hook, H. Olney, James A. Russell, Wm. Rutz, E. A. Wright, Ed Wells and Ed Wheed (alias Snitzer).

PETITION FOR A CITATION AGAINST BESSETTE AND OTHERS.

On the 13th day of September, 1901, "the following further *proceedings in the above entitled cause* were had, to-wit: Comes now the complainant, by its solicitors, and files its verified petition," showing the filing (Record, page 34), of the bill on August 24. This petition averred that the Court "did enter of record in said cause a certain restraining order in accordance with the prayer of said bill of complaint, and made the same returnable on the second day of October, A. D. 1901." (Record, page 35, Article 2.) It averred that the bill prayed "for an injunction and restraining order to enjoin and restrain said defendants and said unknown persons—

"(1) From obstructing and interfering with the business and property of your petitioner, and from in any manner interfering

with, hindering, obstructing or stopping any of the business of your petitioner or its agents, servants or employes in the operation of its factory and business in said Hammond, or elsewhere;

"(2) And from entering upon its grounds, factory or premises, located in said city of Hammond, for the purpose of interfering with, hindering or obstructing your petitioner's business in any manner whatsoever;

"(3) And, also, from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force or violence, any of your petitioner's employes to refuse or fail to do their work or discharge their duties as such employes;

"(4) And, also, from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force or violence, any one from freely entering into the service and employment, or continuing in the service and employment, of your petitioner." The petitioner refers to the bill for greater accuracy. (Record, page 35, Art. 1.)

The petition recited the publication of features of the restraining order in newspapers in Chicago and in Hammond, and the circulation of it by posters and otherwise in and about Hammond. The sixth article (Record, page 37,) named six defendants, viz: Alting, Rutz, Collins, Hoberg, Hoek and Dunlavey, as having been served with the restraining order. It charged that others named, including Charles Johnson, Martin Cunningham and Harry Morrison, "who are defendants to said bill of complaint [an averment wholly false, as the record discloses] who are residents of said city of Hammond, had actual notice and knowledge of the text, scope, purpose and office of said restraining order as early as August 26, A. D. 1891; that J. W. Henning, Edward Bessette, Timothy O'Brien, Patrick Gross, John S. Sugrue, E. W. Tatum, James Kase, Frank Valla, Frank Gillinger, Frank Stavic, William Volkman, ——— Colbert, ——— Sievers and John C. Harding, who are not defendants by name to said bill of complaint, but who have been and now are conspiring and confederating with said defend-

ants to do things prohibited by said restraining order, had actual notice and knowledge of the text, scope, purpose and office of said restraining order at the time of the happening of the occurrences hereinafter set forth, and in which occurrences they participated." (Record, page 37, Art. 6.)

In Article 7, Bessette and the others named, "who are hereby made respondents to this petition, are now in contempt of this Court and have on numerous occasions knowingly and deliberately violated said restraining order in the manner hereinafter more particularly set forth." (Record, page 37.)

Article 8 told about an alleged "wrecking crew" and its depredations, but it gave neither a name nor a place nor a definite circumstance. Nor did it refer to any affidavit whereby any name, place or circumstance might be fixed or ascertained. Mr. Bessette's name was not mentioned. (Record, pages 37-38.)

Article 9 made general averments concerning an alleged "wrecking crew," but it mentioned no date or place, or any circumstance, and the only name given was that of Harry Alting, who "*before and after* the issuance of said restraining order repeatedly threatened to force your petitioner's employes to quit and abandon its service." The use of the "wrecking crew" was again mentioned in connection with harassing and terrorizing "your petitioner's employes, etc." Mr. Bessette's name was not mentioned. (Record, pages 38-39.)

Article 10 described a system of picketing organized and maintained by Harry Alting, E. W. Tatum and others. It averred that these pickets were watching the railway trains coming into the city of Hammond. [This is the first appearance anywhere in the record of the railway station at Hammond. There was no complaint of nor injunction against committees of workmen being at

the station, which is approximately a mile and a half from Conkey's plant.] The first averment of facts tending to show a violation of the restraining order appeared at the close of Article 10, as follows: "That other bands of such pickets, acting under the orders and directions of Harry Alting, E. W. Tatum and the other respondents herein, are picketed about your petitioner's plant and factory, so that it is difficult for any one entering or leaving said factory to do so without encountering such pickets and being stopped by them and frequently threatened and insulted and plied with vile and indecent epithets, so loathsome that decency forbids their incorporation in this petition, and at other times actually assaulted and beaten by such pickets." [The evidence demonstrates that this particular averment is false, or, at least, that it is not sustained by any evidence.] Mr. Bessette's name was not mentioned. (Record, page 40, at conclusion of Art. 10.)

Article 11 stated a colloquy between Harry Alting and Jacob Engle, in which Alting made threats, Engle being at the time on his way to plaintiff's factory, seeking work. The date was September 5, but the place was not mentioned. (Record, page 40.)

Article 12 related to threats made September 10 by Harry Alting, John Dunlavey, John S. Sugrue, A. Hoek, William Rutz, Jerry Eldridge, Patrick Gross, E. A. Wright, Harry Morrison and the "wrecking crew" against the plaintiff's employes, Jacob Engle and Maximillian Kieser, on their way from their work to their homes. Mr. Bessette's name was not mentioned. (Record, page 41.)

In Article 13 William Rutz was alleged to have assaulted John C. Hammer and Fred Forshawll, employes "of your petitioner," on September 4. Mr. Bessette's name was not mentioned. (Record, page 41.)

Article 14 averred that on August 30 Gus Collins secretly aided and assisted J. W. Henning in assaulting and beating John B. Horton and Charles Minger, employes "in your petitioner's factory;" that Horton and Minger were assaulted on August 29, 30 and 31; that Henning was arrested; that he was visited at the police station by Theodore Hoberg, A. E. Wright and others, who sought to procure bail; that Horton was offered twenty-five dollars if he would leave Hammond and not prosecute Henning, but the offer was rejected. Mr. Bessette's name was not mentioned. (Record, pages 41-42.)

Article 15 charged Theodore Hoberg with activity in picketing "your petitioner's factory," but no dates or names were given. Mr. Bessette's name was not mentioned. (Record, page 42.)

Article 16 averred that John Dunlavey and John Ackerman, on September 3, met Annie Ruple, Annie Gherke, Lena Ruple and Mollie Rutz "at or near the Erie railroad tracks, in the city of Hammond, in a pathway leading through the woods," and used toward the girls vile language, accompanied with threats. Mr. Bessette's name was not mentioned. (Record, page 42.)

Article 17 charged that John Dunlavey had threatened a large number of "your petitioner's employes" and that he assaulted Jacob Engle, an employe returning to his home from work. Mr. Bessette's name was not mentioned. (Record, page 43.)

Article 18 averred that Charles Johnson, William Rutz, James Kase and Frank Valla, on August 26, entered the house of James P. Waters, one of "your petitioner's employes," and attempted, by threats, to force him "to quit your petitioner's service." Mr. Bessette's name was not mentioned. (Record, page 43.)

Article 19 charged that on August 31 Charles Johnson, Frank Gillinger, Frank Stavie and William Volkman thrashed Fred F.

Wilkinson, "an employe of your petitioner." Mr. Bessette's name was not mentioned. (Record, page 43.)

Article 20 said that Martin Cunningham had made various threats against Fred Decharme, "one of your petitioner's employes," beginning August 27. Mr. Bessette's name was not mentioned. (Record, page 43.)

Article 21 averred that E. W. Tatum, a resident of Chicago, opened headquarters in Hammond, whence he directed picketing, and in conjunction with Alting directed the "wrecking crew." Mr. Bessette's name was not mentioned. (Record, page 44.)

Article 22 pertains to the appellant Bessette, and was as follows:

"That said 'wrecking crew' and some of the respondents herein and their confederates, whose names are unknown to your petitioner, have, from time to time, and are now designating certain bands of men to visit your petitioner's employes at their homes, against the will and wish of such employes; that said bands, without any process or writ, or invitation whatever, deliberately enter the dwelling places and boarding houses of your petitioner's employes, and imperiously summon such employe to appear before said bands in some saloon, or like place, in the city of Hammond; that on or about the 2d day of September, A. D. 1901, three persons, whose names are unknown to your petitioner, entered the bedroom of D. R. Huntington, one of your petitioner's employes, after said Huntington had retired to his bed for the night, and commanded said Huntington to forthwith rise and dress himself and appear before some band or crowd of persons named by said three uninvited visitors; that said Huntington then and there, being in actual fear of his life, did dress himself, in obedience to said command, and was taken by said three persons to a saloon located in the city of Hammond, the name of which is unknown to your petitioner and unknown to said Huntington; that said Huntington was then and there surrounded by Ed Bessette, Timothy O'Brien, John C. Harding and one —— Colbert and one —— Sievers, respondents herein; that said Bessette, O'Brien, Harding, Colbert and Sievers were never employed in, or in any wise connected with your petitioner's business, and, as your petitioner is informed and believes,

are residents of the city of Chicago; that said Bessette, O'Brien, Harding, Colbert and Sievers then and there boldly informed said Huntington that they would give him his choice of either quitting the employment of your petitioner or having "his head knocked off his shoulders," and said Huntington, being then and there in mortal fear that such threats would be carried out, was coerced to quit, and did then and there, solely by reason of such threats, quit your petitioner's service; that said Edward Bessette, Timothy O'Brien and E. W. Tatum, acting in concert with some of the other respondents and a large number of persons, whose names are unknown to your petitioner, did hold meetings daily of bands, or committees of men, the members of which are unknown to your petitioner; that said bands, or committees, visited the homes of your petitioner's employes, and by like means as the means employed in the case of D. R. Huntington, as hereinbefore set forth, coerced and forced your petitioner's employes to leave its service." (Record, pages 44-45.)

The affidavit of Huntington was filed in support of Article 22. (Record, pages 66-68.) Huntington also testified at the trial. (Record, pages 203-223.)

Article 23 summarized and construed the petition, and for as much as it established the theory of the proceeding, whereby its character was fixed, the accused advised as to the legal nature of the charge against him and the law controlling it was determined, the article is reproduced, as follows:

"That said respondents have, almost daily since the issuance of said restraining order, done, and are now doing, the following things, in violation of the letter and spirit of said restraining order, viz.:

"Have interfered with, hindered and obstructed, and are now interfering with, hindering and obstructing the business of your petitioner and its agents, servants and employes in the operation of your petitioner's factory and business; and have entered upon the premises of your petitioner for the purpose of interfering with, hindering and obstructing its business and affairs;

"And have, by means of threats, intimidations, persuasion, force and violence, attempted to compel and induce your petitioner's em-

ployes to refuse or to fail to do their work or discharge their duties as such employes, and to compel and induce such employes to leave your petitioner's service;

"And have prevented, or attempted to prevent, divers persons, by means of threats, intimidation, force and violence, from freely entering into the service or employment, or continuing in the service or employment of your petitioner, and have attempted to interfere with and hinder your petitioner in the free control and direction of its business and affairs;

"And have congregated in, upon and about the sidewalks, streets, alleys, approaches and places adjoining and adjacent to your petitioner's factory and buildings, for the purpose of intimidating its employes and for the purpose of preventing such employes from rendering their services or discharging their duties under such employment as such employes;

"And have, by threats, force and violence, induced and coerced a number of your petitioner's employes to leave its service, and have in divers ways interfered with and molested your petitioner's employes and other persons seeking employment in your petitioner's factory;

"And have, both singly and collectively, visited the homes of your petitioner's employes, or some of them, for the purpose of intimidating and coercing such employes to quit your petitioner's service, and in some instances have succeeded in so doing;

"And have congregated and collected in and about the approaches to your petitioner's factory and buildings, for the purpose of picketing, patrolling and guarding the streets, alleys and approaches to your petitioner's factory and buildings, for the purpose of intimidating, threatening and coercing your petitioner's employes and persons seeking employment with your petitioner, and have intimidated, threatened and coerced such employes and such persons seeking employment;

"And have employed said 'wrecking crew' and other persons, whose names are unknown to your petitioner, to aid and assist them in violating the letter and spirit of said restraining order, as herein set forth." (Record, pages 45-46.)

Article 24 concluded that the parties named in "the petition" were in contempt of court "for the wilful and repeated *violation and violations of said restraining order,* and its several terms and

provisions, as hereinbefore specifically set forth, and that said respondents, and each of them, threaten to continue *to violate and will violate said restraining order* and each of its terms and provisions. Wherefore your petitioner respectfully requests this Court, that in consideration of the *violation and violations of said restraining order* by said respondents, and each of them, as hereinbefore set forth, it will issue a writ of attachment, etc. (Record, pages 46-47.)

The petition was subscribed "W. B. Conkey Company, by Alfred E. Wilcox, general manager." And Wilcox made the verification before J. G. Ibach, a Notary Public and a lawyer in interest. (Record, pages 47-48.)

THE SUPPLEMENTAL RECORDS.

In the petition for attachment *the restraining order was not set forth* either in *haec verba* or in substance, and the sole information as to its context was by reference to the suit in chancery, as follows:

"That on the 24th day of August, A. D. 1901, and after said bill of complaint had been so filed, and after due consideration thereof, said Circuit Court did enter of record in said cause a certain restraining order, in accordance with the prayer of said bill of complaint, and made the same returnable on the 2nd day of October, A. D. 1901, to which order, so entered of record, your petitioner begs leave to refer for greater accuracy." (Record, page 35, Art. 2.)

Of the thirty-one affidavits filed in support of the petition, only three mentioned Bessette. D. R. Huntington, Henry P. Boyle and Michael J. Kennedy were the affiants.

Boyle's affidavit mentioned Bessette as one of those who participated in picket work. (Record, page 75.) Various offenses were ascribed to other persons.

Kennedy's affidavit named Bessette as among those who did picket work. (Record, page 78.) Other persons were charged with various offenses.

Huntington's affidavit contained the following charge against Bessette:

"On the 2nd day of September, 1901, I went to my bedroom, and retired between 8:30 and 9 o'clock. After I had gone to bed one F. Stone, in company with two or three others, whose names are not known to me, entered my bedroom without my permission, and talked in a loud and boisterous manner. None of said persons had any right there. Said Stone and others told me, among other things, that I was wanted down town and I should get up and dress. In response to their command I got out of bed, dressed myself, and they took me down town. On the way down they said that they were directed by the committee to take charge of me, and that they proposed to turn me over to the committee, composed of ——— Colbert, Ed Bessette, Tim O'Brien, ——— Sievers and John C. Harding and a number of others, whose names are unknown to me. We went to the committee's headquarters, in a saloon, the name of which I do not know. We arrived at the saloon about 9:30 in the evening; the committee, composed of the men above named and others, took seats around the table and directed me to take a seat. O'Brien then said: 'I tell you, Huntington, you must either take your chance of having your head knocked off your shoulders or you must quit that place.' Bessette said, among other things: 'Huntington, the boys have evil designs on you, but if you will come out we will call the dogs of war off.' The other members of the committee made substantially the same statements. After considering the matter and fearing that my life was in danger, I consented to quit Conkey's place, and I did not return to work at said Conkey's plant the next day." (Record, page 67.)

TERMS OF THE CITATION.

The record recites the order of the Court as follows: "And the complainant also files with its said petition, and in support thereof, the affidavits, thirty-one in number, of Anna Gehrke, Annie Ruppell, Mollie Rutz, Lena Ruppell, J. G. Ibach, Jake Engel, Maxi-

millian Keiser, Chas. Minger, John B. Horton, Wallace Worden, Dana Sommers, James Francis Waters, D. R. Huntington, James F. Waters, Abraham Greenbaum, Joseph N. Humphrey, Daniel J. Sheehan, Sigismund Coln, Frank J. Stewart, Henry P. Bogle, Michael J. Kennedy, Henry Sapp, W. A. Warren, Joe Murray, John D. Hammer and C. F. Wilkinson, and it appearing to the Court from said petition and affidavits that Harry Alting, William Rutz, Gus Collins, Theodore Hoberg, Charles Johnson, John Ackerman, Edward Bessette, E. W. Tatum, John Dunlavey, J. W. Henning and Harry Morrison have contemptuously *violated the restraining order* heretofore made and issued *herein* by this Court. It is now thereupon ordered by the Court that a rule against said persons and each of them, requiring them and each of them to be and appear before this Court, at Indianapolis, on Thursday, the 3rd day of October, A. D. 1901, at 9 o'clock of said a. m., and show cause, if any exists, why they and each of them should not be punished *for the contemptuous violation of said restraining order as aforesaid.*" (Record, pages 84-85.)

The citation was issued in the form of a certified copy of the order of Court. (Record, page 85.) It appears to have been served only on Harry Alting, John Ackerman, Edward Bessette, Harry Morrison and William Rutz by reading; on Gus Collins by copy; on Charles Johnson by his indorsing on the writ the acceptance of service. (Record, page 86.)

BESSETTE'S SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION OF THE COURT.

On September 28 Bessette entered his special appearance to plead to the Court's jurisdiction over him. His verified plea was docketed in the chancery proceedings, as were all the papers throughout the record, and it was in substance as follows:

"Comes now Edward E. Bessette, who is a defendant in the petition for attachment in the cause above entitled, and enters herein his special appearance for the sole purpose of pleading to the jurisdiction of this Honorable Court over him as a defendant in this cause, and so pleading, showeth unto your Honors that he is now and at all times mentioned in the bill of complaint and in the petition for attachment, has been a citizen and resident of the city of Chicago, in the State of Illinois, of which State the said complainant, the W. B. Conkey Company, is and likewise has been a citizen and resident.

"Wherefore, your respondent says that for as much as the matters in controversy, as between said complainant and this respondent, arose wholly between citizens and residents of one and the same State, therefore your Honorable Court has not jurisdiction in the premises, and he asks hence to be discharged." (Record, pages 87-88.)

Bessette's plea to the jurisdiction was overruled on October 3 and he excepted. (Record, page 88.) That ruling of the Court was the first error assigned in this appeal. (Record, page 119.)

On October 3, when the Court overruled Bessette's special plea to the jurisdiction, October 16 was fixed as the time for further proceedings as to him, and October 25 as to the other defendants.

BESSETTE'S VERIFIED ANSWER.

On October 8, Bessette filed his answer under oath, traversing the petition. (Record, pages 89-112.)

In Article 1 of his answer, Bessette challenged the jurisdiction of the Court over the subject matter of the suit in chancery, for that the essential diversity of citizenship did not exist. It was averred that throughout the proceedings John Dunlavey, Ed Wheed (alias Snitzer), John Ackerman, Oscar Kohlstedt, E. McKibben, Wheeler Armstrong and J. Eldridge has been and were citizens and residents of Illinois, and not of Indiana, as the bill charged, and that the averment in the bill that those defendants were citizens

and residents of Indiana had been fraudulently made to induce the Court to take cognizance of the cause. (Record, pages 89-90.) At the trial of the cause the appellant offered in evidence the affidavit of John Dunlavey to sustain this article of the answer, but the Court excluded the evidence offered, and an exception was given. (Record, pages 577-579.) This ruling of the Court is the twenty-second error assigned. (Record, pages 121-122.)

In Articles 2, 3, 4, 5, 6 and 7, of his answer, Bessette denied the charges in the corresponding articles in the petition.

In Article 8, of his answer, Bessette denied responsibility for and knowledge of the existence of a "wrecking crew" and of any acts of violence, etc. He said:

"That as to the matters and things stated and set forth in Article 8 in said petition for attachment, this defendant says that he has no knowledge whatsoever of any act of brutal violence, or of violence in any degree whatsoever, committed or advised against the employes of the petitioner or any of them, or against any person seeking service in the petitioner's factory, or against any person seeking to carry on or to assume any business relationship whatsoever with said petitioner, and he denies that he has any knowledge whatsoever of the insulting or terrorizing of any of said petitioner's employes by the use of violence, threats, indecent language, or in any manner whatsoever, and that he has no knowledge whatsoever of any system of picketing said petitioner's factory, or the highways and paths leading to the same, or the homes of said petitioner's employes, and he denies that he has any knowledge whatsoever that any of such employes, or persons seeking employment in the service of the petitioner, has been or is being terrorized; and he denies that he has ever boasted, in the city of Hammond or elsewhere, that he has read the restraining order made and entered by this Honorable Court in this cause, and that he did not intend to obey and abide by the same; and he denies that he has ever brought or known of the bringing to said city of Hammond of any thugs, prize fighters, or other persons to constitute, and who do constitute, what is known as the 'wrecking crew,' described in said peti-

tion, and this defendant, further answering so much of said article as pertains to said 'wrecking crew,' says that he has ever counseled and advised against any violence on the part of any person in connection with the controversy between said petitioner and the respondents in said cause, and he further says that on occasions when he was in the city of Hammond, as hereinafter more fully stated and set forth, he was approached at intervals by persons who asserted that they were hostile to said W. B. Conkey Company, but whom this defendant believes were in the service and employ of said W. B. Conkey Company, and who sought, from this defendant, to learn his views as to the policy and conduct of said parties in resistance to the W. B. Conkey Company in the premises; that whenever so approached this defendant said to said persons that they must positively abstain from any and every sort of violence, and that they must not in any manner whatsoever molest or assault any of the employes of said W. B. Conkey Company, and this respondent says that he publicly gave it out that if he learned of any misconduct on the part of any member of any labor union, he would take it upon himself to prefer charges of conduct unbecoming a union man against such offending persons in the union to which they belonged. This defendant says that it is, and ever has been, his policy and belief that force, intimidation and violence were detrimental to the cause of labor, and that he stands for, and always has stood for, conciliation and peace and the arbitrament of matters in controversy between employers and their employes; and he denies that he ever acted in concert with any 'wrecking crew' in the city of Hammond or elsewhere, and he denies that he ever pointed out to any member of said 'wrecking crew' any one or more of the employes of said petitioner, and he denies that he ever directed said 'wrecking crew' or any member thereof to assault, beat, or in any manner whatsoever maltreat any employe of said W. B. Conkey Company, and he denies that he has any knowledge whatsoever of the so-called 'wrecking crew,' and he says that if any such 'wrecking crew' existed at the city of Hammond it was created and maintained there by said W. B. Conkey Company for the express purpose of creating trouble and of bringing violence, all to the end that said W. B. Conkey Company might have apparent justification for a complaint to this Court, such as is set forth in said petition for attachment."

In Articles 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, of his answer, Mr. Bessette denied the averments made in the corresponding articles of the petition.

In Article 22, of his answer, Bessette met the charges in the corresponding article of the petition, which related, among other things, to the alleged Huntington episode. Of himself, the appellant said: "I am a citizen and resident of the State of Illinois, and have been for more than four years last past; I am the same person mentioned as Edward Bessette in the petition for attachment and in the citation issued in this cause on the 13th day of September, A. D. 1901; I am thirty years of age, and for more than seventeen years last past have been a printer engaged in the printing business; I am a member of Chicago Typographical Union, No. 16, of the International Typographical Union, and have been a member of said International Typographical Union for twelve years last past."

Speaking of the objects and purposes of the Chicago Typographical Union, Bessette said they were as set forth in the Constitution and By-Laws of the Union, which he filed as an exhibit with his answer. (Record, pages 452-497.) And he quoted the preamble, as follows:

"Preamble.

"To establish and maintain an equitable scale of wages, and protect ourselves from sudden, unreasonable fluctuations in the rate of compensation for our labor, and protect, too, just and honorable employers from the unfair competition of greedy, cheap-labor huckstering rivals; to defend our rights and advance our interests as workingmen; to create an authority whose seal shall constitute a certificate of character, intelligence and skill; to build up an organization where all worthy members of our craft can participate in the discussion of those practical problems upon the solution of which depend their welfare and prosperity as workers; to foster

fellowship and brotherhood, and shield from aggression the isolated, defenseless toiler; to aid the destitute and unfortunate, and provide for the decent burial of deceased members; to develop and stimulate, by association and social converse, those kindly instincts of humanity that most highly adorn true manhood; to encourage the principle and practice of conciliation and arbitration in the settlement of differences between labor and capital; to incite all honorable efforts for the attainment of better conditions of labor—shorter hours, increased privileges and greater enjoyment of the ennobling amenities of life, the concomitants of culture and civilization; to defend the defenseless, befriend the friendless, and in all charity inculcate lessons of justice and good will among men—the undersigned, journeymen printers of Chicago, do enact, declare and establish the following Constitution and By-Laws for their government."

He represented and showed that it was the policy and purpose of the International Typographical Union to build up and conserve the printing industry, and that to the end that such objects and purposes might be attained, the union had pursued toward employers such a course as that there were now some 42,000 union printers at work in some 7,000 printing establishments in the United States, its insular possessions and the Dominion of Canada. These figures represented approximately seven-eighths of the printing industry. He exhibited contracts made by the union with the American Newspaper Publishers' Association, an organization of the newspaper publishers, embracing practically all the leading newspapers of the United States (Record, pages 98-103), and he also exhibited the contract existing between the Union and the United Typothetae of America, an organization of the book and job printers of the United States. (Record, pages 103, 450-451.) He attempted to prove that the W. B. Conkey Company, represented by W. B. Conkey, was a member of the United Typothetae, but Judge Baker excluded the evidence. (Record, page 562.) He set

forth Conkey's violation of contracts previously made with the Union, and the unlawful arrest and imprisonment of the officers and members of the Union by the Conkey Company on other occasions. (Record, page 104.) He denied that the public officials of Hammond and of Lake County, Indiana, were failing or refusing to do their duty, and he said that, on the contrary, "the only complaint which the W. B. Conkey company can make as against the officials, is, that being advised of the falsity of the charges and of the malicious methods pursued by said W. B. Conkey Company, said officials have decided to, and do refuse to permit the processes of law in their hands to be abused by said W. B. Conkey Company, and diverted from their lawful functions to the selfish and unjust ends of said W. B. Conkey Company." (Record, page 105.) As to his personal behavior in the premises and his experiences with respect to D. R. Huntington, Bessette stated the facts as follows:

"On or about the 27th day of August, 1901, I went to Hammond, Indiana, pursuant of directions given to me by said Chicago Typographical Union, said city of Hammond then and there being within the competitive district of Chicago publishing houses and within the competitive district of said Chicago Typographical Union; that prior to my departure I had been informed that there was a controversy between the W. B. Conkey Company and some of its employes, and I was instructed by said Chicago Typographical Union to investigate the facts in the premises and ascertain the truth pertaining thereto, and to report to the said Chicago Typographical Union upon the causes and conditions of said controversy, and I had no other instructions, powers or duties whatsoever. On my arrival at said city of Hammond I took up my abode at the Monon Hotel, a public hostelry in said city; on the evening of my arrival I was visited by a delegation of printers, who represented to me that they were in the employ of said W. B. Conkey Company and that they desired to quit the service of said Company, and they asked me what said Chicago Typographical Union would do for them, or in their behalf, in the event they quit the service of said Company; I told them I had no authority to give them any as-

surances whatsoever; they informed me that it had been reported among the printers in said city of Hammond that said Chicago Typographical Union had decided not to accept any of them to membership unless they came of their motion before an open meeting of said Union; I answered them that their information was substantially correct, and I now say and represent to this Honorable Court that on, to-wit, the 25th day of August, 1901, a resolution, which resolution was the first action taken by said Chicago Typographical Union in the premises, was adopted by said Chicago Union to the effect that no officer, agent or representative of said Union have authority to give assurances of membership in said Union to any printer at the time employed at Hammond, Indiana, but that said Chicago Union reserved to itself, and withheld from its officers, agents and representatives, the privilege and right to investigate openly the application of any such Hammond printer, with a view of determining his eligibility and competency to become a member of said Union; that thereupon said committee of Hammond printers requested me to use my influence with said Chicago Union to have it accept the applications for membership of said Hammond printers, but to this request I made no promises and gave no assurances whatsoever; that on, to-wit, the 29th day of August, 1901, I reported to said Chicago Union the facts as herein stated of the visit to me by said committee of printers at Hammond and their request with respect to their becoming members in said Chicago Typographical Union; that said Chicago Typographical Union thereupon adopted a resolution to the effect that it would not accept or entertain the application for membership of any printer in the service of the W. B. Conkey Company; that immediately after the adoption of said resolution by said Chicago Typographical Union, on August 29, I notified a committee of Hammond printers of the action of said Union, and that the reason for the adoption of said resolution was that said Chicago Typographical Union would not permit its members to work for said W. B. Conkey Company, because it did not pay fair wages or observe fair conditions in the printing trade, and that by reason of its misconduct in the premises it was unjust to its competitors who were paying fair wages and observing fair conditions that said W. B. Conkey Company should have the co-operation and support of said Chicago Typographical Union; that after said information had been imparted, as I am informed, to said printers at Hammond, I again visited Hammond, and on labor day, to-wit, the 2nd day of

September, 1901, I was called on by one ——— Stone, who said, and represented to me that he came in behalf of one D. R. Huntington and others who had been printers in the service of the said W. B. Conkey Company, but who, having become wearied with the intolerable condition and the unfair wages prevailing in said W. B. Conkey Company, had quit the service of said W. B. Conkey Company, and desired said Chicago Typographical Union to recommend them for employment in the service of publishers who paid fair wages and observed fair conditions, and the said Stone represented to me that said Huntington desired to confer with me to the end that he might obtain a recommendation of said Chicago Typographical Union; that I thereupon investigated the record of the said D. R. Huntington as a craftsman and printer, and ascertained that he had previously been a member of said Chicago Typographical Union, but that he had violated his obligations and had been expelled therefor, and that objections to his membership were likely to be made; that thereupon said Stone informed me of his desire that I make to the said Huntington the statement of his case as it appeared to said Chicago Typographical Union; that thereupon I informed said Stone that I, in company with certain officers of said Chicago Typographical Union, would be at Fitzpatrick's saloon, a public house, in said city of Hammond; that I have no knowledge as to the further action of Stone in the premises, except such as I learned from said Huntington, who, in company with said Stone, came to the place of said Fitzpatrick at the hour I had mentioned; that when said Huntington was introduced to me, he said that he had made the visit to us with some fear that he might be assaulted on the streets; I thereupon asked him who it was that he feared might assault him, well knowing at the time, as I did, that all union workingmen in and about said city of Hammond were strictly observing a policy of peace and conciliation and that they were positively opposed to any act of violence whatsoever; that thereupon the said Huntington told me that he feared that some people upon the street might assault him, and I told him that he was in no danger whatsoever of assault by any union workingmen, and that if he desired assurance in that respect I and the gentlemen who were with me would accompany him to his home or wherever else he might be required to go, and that we would protect him against any violence whatsoever, even though it might involve us in a controversy, we desired him to have perfect assurance that we discountenanced any threats, intimidation or violence toward

any person on account of his connection with said W. B. Conkey Company; that thereupon said Huntington inquired of me as to what the Chicago Typographical Union would pay in addition to granting him a membership card if he would leave the service of the said W. B. Conkey Company; that I thereupon asked the said D. R. Huntington to state to me what, if anything, he thought he was entitled to at the hands of said Chicago Typographical Union; that he thereupon informed me that he had a little printing establishment in his residence in the city of Chicago, upon which there was a mortgage, and that if said Chicago Typographical Union would pay off said mortgage and save his plant for him, or pay him $75 and grant him a membership card in said Chicago Typographical Union, that he would quit the service of said W. B. Conkey, and that in answer to said statement made by said Huntington I told him that it was a matter of indifference to us whether he quit or continued in the service of the W. B. Conkey Company, and I told him that we would not pay him any money; that thereupon said Huntington retired from my presence, in company with the President of the Illinois State Federation of Labor, but he subsequently returned and asked me for a further conference on the following day; I have no knowledge of anything that transpired between said Huntington and said President of the Illinois Federation of Labor. On the following morning I met said Huntington on the streets of Hammond, when he informed me that he had of his own motion quit the service of said W. B. Conkey Company; he told me that he was in financial distress and that his family was destitute, and asked me if I would loan him fifty cents until he would draw his wages from said W. B. Conkey Company; I acceded to his request and loaned him fifty cents, but said sum of fifty cents is the only money I ever paid to said Huntington or ever offered to pay him. On the evening of that same day I again met said Huntington in a street car in said city of Hammond; he was then in the company of his wife and children and his brother; the said Huntington then repaid me the fifty cents and expressed to me his gratitude for the favor of said loan; he introduced me to his wife and children and to his brother; he, of his own motion, stated to me that he was then returning to Chicago and that he was going to change his ways and pursue a course that would command confidence and respect of fellow craftsmen, and that he desired said Chicago Typographical Union to give him a chance and

grant him a recommendation to the employers of union men, to the end that he might obtain fair wages and work under fair conditions; that he and his wife seemed highly pleased with his resolution to return to fair methods, and with the small favor I had granted them in the loan of fifty cents; and I now say and represent to the Court that from the appearance of said Huntington and his family, I believed they were destitute and in great distress at the time I made said loan of fifty cents, and that I would not have accepted the repayment of said loan but for the fact that I feared said Huntington was seeking an opportunity to misrepresent me and to have some apparent reason for saying that I had paid money or held out an inducement to an employe of said W. B. Conkey Company to induce him to leave the service of said W. B. Conkey Company; that either on that day or the day following, and I am not certain which, the said Huntington informed me that his brother was a printing pressman, and that while he had not been in the service of the W. B. Conkey Company, he might enter the service of said Company if he continued to stay in said city of Hammond, and said Huntington told me that his brother desired to go to Kansas, but that he had no means wherewith to travel, and asked me if said Chicago Typographical Union would not give financial assistance, as he was wholly without means; I answered him that the only charity furnished by the Typographical Union was the Childs-Drexel Home for union printers; and I now say and represent to this Honorable Court that said Childs-Drexel Home is in all respects a worthy charity, and that its organization and management are provided for by charter, constitution and by-laws, which are set forth in detail in said Exhibit A, beginning at page 93; that he thereupon asked me if said Chicago Typographical Union had not an arrangement with the railroad companies whereby a cheap rate of transportation could be obtained; I informed said Huntington that during the winter seasons the Chicago Typographical Union had worked in conjunction with the Bureau of Associated Charities in Chicago, and that it had then assisted destitute persons to return to their families and friends in other places, where such destitute persons might be properly cared for and maintained; but I said to him that his brother doubtless would not desire transportation under those terms, even if it were then available, the circumstances of which I was not at the time informed, and I told him that the railroad tickets which had been acquired

and used for the purpose aforesaid, during the preceding winter, bore a large imprint upon their face of the words, "Pauper's Ticket;" the said Huntington thereupon answered that the imprint upon said ticket would make no difference either to him or his brother, and he asked me if I would not loan him $2 for the use of his brother in obtaining said pauper's ticket, which favor I declined to grant him, but did give him the address of the Associated Charities in said city of Chicago; on the 10th day of September, 1901, Huntington approached me in front of the Monon Hotel, in said city of Hammond, and told me he had returned to Hammond to draw a half day's wages which he had earned in the service of said W. B. Conkey Company prior to the preceding pay day; he told me that he had returned to Chicago and had obtained employment, and that he was then an applicant for membership in said Chicago Typographical Union, and that he was doing well, and that he believed his prospects were favorable. I shook hands with him and told him that I was pleased to hear his good reports and that he had resolved to make a man of himself, and wished him success, and he then told me that his brother had gone to Kansas; that he had succeeded in borrowing the two dollars from one Harry Alting, who had previously been in the employ of said W. B. Conkey Company. The foregoing are all the experiences I ever had with said D. R. Huntington, and I have never seen him since we parted at our interview in front of said Monon Hotel on said 10th day of September; that afterwards, to-wit, the 12th day of September, I was informed at the city of Hammond that the said D. R. Huntington had made an affidavit against me, which was to be filed by the said W. B. Conkey Company, in support of its application for attachment in this cause; that thereupon I returned to Chicago and began an investigation of the said D. R. Huntington, and learned that his statements and representations made to me were not true, but, on the contrary, that he was doing some printing work in a dismantled toilet room in his residence in a rear flat over the saloon of Patrick O'Connor, 1789 North California avenue, and that in said printing work he was unlawfully and without right using a legally registered label of the said International Typographical Union, which label had been stolen from the office of the printing establishment of Hyman Quinn & Co., on Dearborn street, near Van Buren, in said city of Chicago, and that with the use and aid of said label he was obtaining contracts for printing on the false and fraudulent representation that he was a member of the Typo-

graphical Union and entitled to the use of said label. I have since been informed, and believe, that the visit of said Stone to the room of said Huntington on the occasion mentioned in the affidavit of said Huntington, was at the instance and request of said Huntington, and by appointment with him, and I deny that any statement was ever made in my presence or with my knowledge and consent to said Huntington, either in the words or to the effect as set forth in his affidavit, to-wit: 'I tell you, Huntington, you must either take your chance of having your head knocked off your shoulders or you must quit that place.' I deny that I ever made to Huntington the statement in the words or to the effect by him charged in said affidavit, to-wit: 'Huntington, the boys have evil designs on you, but if you will come out, we will call the dogs of war off.' And I deny that any such statement or any statement to that effect was ever made by any other person to said Huntington in my presence or with my knowledge and consent." (Record, pages 105-110.)

He showed that the Union was an industrial and benevolent association, and exhibited the Constitution of the Chicago Union (Record, page 96; pages 452-496), and the cemetery statistics and record of charities were proven at the trial. (Record, pages 497-521.) He also exhibited the Constitution and laws of the International Typographical Union (Record, page 96; pages 376-451), and the administration of charities through the Childs-Drexel Home for Union Printers was proven. (Record, pages 522-555.) At the trial Bessette sustained his version of the Huntington matter by the testimony of Michael Colbert (Record, pages 319-581) and of W. J. Spires (Record, pages 562-586); by the affidavit of Timothy O'Brien (Record, page 313) and of John C. Harding (Record, page 315). And the testimony of Huntington, though produced by the appellee, upon cross-examination, largely confirmed Bessette's answer. (Record, pages 206-223.)

In Article 23 of his answer Bessette mentioned the conflict previously existing between Conkey and the Union, and stated how the

Union had opposed Conkey in political work. The answer specifically denied that any act on the part of Bessette was done in contempt of the Court; it prayed judgment that his answer be held sufficient to discharge the rule against him to show cause, and that he be discharged hence with his costs and for all proper relief. The answer was duly verified by Bessette. (Record, pages 110-112.)

COURT'S CONSTRUCTION OF THE RECORD AND PROCEEDINGS, MADE PRELIMINARY TO TRIAL.

Desiring to prepare for his defense and to the end that he might know whether the affidavits filed with the petition for an attachment were evidentiary and in support of the petition for the purpose of obtaining the rule, or whether they were in the nature of separate informations, Bessette, on the 12th day of October, filed his verified motion for a rule to require the complainant:

"1. To file and place upon record in the office of the clerk of this court forthwith a copy of each and every accusation and charge and of each and every specification of an accusation and charge made and intended to be made against this defendant upon the trial of this cause now set for Wednesday, the 16th day of this present month.

"2. To furnish forthwith to this defendant, or to his counsel, a copy of each and every accusation and charge and of each and every specification of an accusation and charge made and intended to be made against this defendant upon the trial of his cause, now set for Wednesday, the 16th of this present month.

"And for cause this defendant would represent and show unto this Honorable Court that he is a citizen and resident of the State of Illinois; that each and every one of the matters and things alleged to be in controversy occurred at and in or in the vicinity of the city of Hammond; that said city of Hammond is approximately almost two hundred miles distant from the place of the holding of this Honorable Court, and that this defendant believes,

and upon such belief states the fact to be, that any and all persons who may be and are advised as to the facts in the premises and of the facts constituting the defense of this defendant are citizens and residents of said city of Hammond, or of other places equally distant and remote; that counsel of this defendant has been informed by counsel for the W. B. Conkey Company, complainant, that affidavits other than the affidavit of one D. R. Huntington, heretofore filed in this cause, have been and are being prepared to be filed at the hearing and trial of said cause; that unless this defendant shall have been at a reasonable time prior to his trial informed of the nature of the accusation and charge against him and furnished with a copy thereof, he cannot safely and properly prepare for his defense. (Record, page 113.)"

The Court denied the right to the rule as prayed, and in a bill of exceptions the Court construed the petition to be for a rule to show cause why Bessette should not be punished for the contemptuous violation of the restraining order, and the Court further held and stated that the petition contained each and every accusation and each and every specification of an accusation upon which the rule to show cause was based. The Court refused to require Conkey's attorneys to present their affidavits. (Record, page 117.)

II.

THE TRIAL RECORD.

SUMMARY OF THE EVIDENCE PRODUCED BY THE W. B. CONKEY COMPANY UPON THE HEARING; IT SHOWS THE TRIAL THEORY TO HAVE BEEN THAT BESSETTE HAD VIOLATED A RESTRAINING ORDER, NOT THAT HE HAD OBSTRUCTED THE ADMINISTRATION OF JUSTICE, AND IT FURTHER SHOWED THAT BESSETTE WAS ABSOLUTELY INNOCENT.

Inasmuch as the law of the case, including the jurisdiction of the Court, largely depends upon whether Bessette was tried for (1) violating a restraining order or (2) for obstructing the administration of justice, a summary of the evidence is necessary.

Upon the issues joined upon the complainant's petition and the answer of Mr. Bessette the Court proceeded to trial on October 16, at Indianapolis. (Record, page 129.) An index of the evidence appears at record pages I-IV, and the stenographer's index is at pages 126-128, in the latter the pagings being to the marginal numbers. The evidence introduced by the complainant was as follows:

ORIGINAL BILL OF COMPLAINT. (Record, pages 129-144.)

TEMPORARY RESTRAINING ORDER. (Record, pages 144-148.)

MARSHAL'S RETURN TO THE RESTRAINING ORDER. (Record, pages 148-149.)

AFFIDAVIT OF HENRY P. BOGLE, averring: Affiant is purchasing agent of the W. B. Conkey Company; on August 16 Harry Alting, a pressman, was discharged for incompetency; three days later thirty-nine pressmen quit the service of the Conkey Company, shutting down the presses; during the week more than one hundred additional employes quit work; men, women and girls joined the strikers; on August 20-24 new men were employed at Chicago to succeed the strikers; Bogle met these new men at trains to escort them to the Conkey plant; on disembarking from trains the new men were immediately surrounded by strikers, numbering variously from fifteen to fifty; strikers made threats and used vile language, so that only 10 per cent. of the new men went to the factory; the injunction was issued August 24 and 500 copies were immediately printed and posted conspicuously throughout Hammond, and on August 25 the principal features of the order appeared in Chicago and Hammond newspapers; on August 25 Bogle "met United States Deputy Marshals Foley and Rankin and assisted them in identifying the parties named in the injunction writ, who

were served by them;" during the week, August 25-31, Bogle *"went to the various railroad stations at Hammond for the purpose of meeting men who had been employed through the Chicago office, and notwithstanding the writ of injunction had been issued, served and liberally published through Hammond, the men whom I met were accosted by the strikers and were persuaded not to enter in the employ of the W. B. Conkey Company;"* ever since the writ was issued strikers and their sympathizers have from time to time assembled on the corner in front of the Conkey plant, and thence paraded up and down Conkey avenue; there has been a well-organized corps of pickets parading streets, highways and paths leading to the plant, and Bessette was among those doing picket work; Bogle has almost daily received reports of injuries to employes inflicted by strikers and their sympathizers; bindery girls have been subjected to insults and threats for not joining the strikers, and some have quit the service therefor; pickets, in groups from four to twenty, constantly taunt employes, who are in fear of their lives and are with difficulty persuaded to remain in the service; policemen have been required to escort employes, but no names or dates are given; Bogle escorted J. B. Horton, E. Minger, Abraham Greenbaum, P. Humphreys and D. G. Sheehan; has heard that the strikers had employed thugs to come from Chicago to Hammond to assault Conkey's employes, and "that these thugs are now in and about said city of Hammond; J. W. Henning, claiming to be a Chicago stonemason, assaulted E. Minger, a Conkey employe, on August 30, and on the day following he also whipped one Horton; Henning was arrested and Harry Morrison, one of the strikers, attempted to get bail for Henning." *Among those who have been most prominent in accosting the men in going to and coming from the Conkey plant and doing picket work and in meeting the men at railroad stations*

and making threats are John Dunlavey, William Rutz, John Ackerman, Gus Collins, E. W. Tatum and Harry Alting. (Record, pages 158-161.)

AFFIDAVIT OF MICHAEL J. KENNEDY, averring: Affiant is a special policeman at the Conkey plant from 6 a. m. to 6:20 p. m.; in the early part of the strike the strikers would surround employes and by means of threats would attempt to induce them to quit Conkey's service; some of the efforts succeeded; affiant escorted employes to the street car to protect them against violence; the injunction was issued August 25 and *"was served on all strikers and all persons at and near said plant;"* in addition copies were printed and posted and circulated; notwithstanding this, a system of picketing has been conducted at the plant, among the pickets being Bessette; pickets formed in squads of three or more; some ride bicycles up and down Conkey avenue, which is used by sixty per cent. of the employes; *"said pickets accost all persons going to and from said plant, and if the same are employed there, attempt to induce persons not to remain in the employ of said W. B. Conkey Company or enter into its employ or have any business dealing or connections with said W. B. Conkey Company;"* has reminded pickets of the restraining order and they disclaimed any intention to obey it; some pickets have used violent and indecent language to persons going to and from the plant. The only specific incident mentioned by this affiant he states as follows:

"On Friday, the 6th of September, 1901, Oscar Holke, H. French and Floyd Foker congregated on the lawn immediately across the street from the W. B. Conkey plant of business, within one hundred feet of said plant, and I approached them and asked them what they were doing. Said Oscar Holke replied, 'I am doing picket work here.' Said Foker and French were present at the time I asked said Holke and heard my question and said

Holke's reply. Said persons after their statement to me remained there for at least two hours, and when they left, three or four persons took their place. I have had similar experiences almost daily with persons who were doing picket work, and said persons do not make any secret of the fact that they are there for picket duty and propose to do so. Among those who have been more active in such picket work are the following: John Dunlavey, John Ackerman and William Rutz, Oscar Holke and E. Wheed, alias Snitzer." (Record, pages 166-167.)

Anton Bruckner testified: He was a printer, residing at Hammond and Chicago, with wife and two children; in the service of Conkey Company three years continuously except one week during the strike; resided on Conkey avenue, in Hammond; strikers in passing his house called out, "Here lives Toney Bruckner. He is a rat;" this so worried Mrs. Bruckner that the family moved to Chicago; notices of the injunction were posted on Sunday, and on the following Friday witness first met Bessette; they were in a group, and one man inquired of witness if he was still working; witness answered, "No," and said he was going to move back to Chicago; the man then said, "All the boys that are out will be taken care of, they will all get a card;" Bessette merely handed his card to witness on being introduced by a Mr. Murtis; Bessette said nothing as to what connection he expected to have with the strike; witness attended a meeting at which Bessette was present, the total attendance being eight or ten; Bessette said it would be advisable to place men as pickets at the plant and around there and at the depot.

41. Q. Did Mr. Bessette say anything as to what were to be the duties of the pickets? A. Well, it was to get the men out if they could, and the proposition was made, how could we get the men out. I don't remember who said it, but it was said, "How can we ap-

proach the men in order not to get into trouble on account of this injunction?" and they simply said to ask them if they wanted a card.

42. Q. Did Mr. Bessette respond to the inquiry as to how they were going to get around the injunction? A. Yes, sir; he gave the answer.

43. Q. That was Mr. Bessette's answer, and he said to ask them if they wanted a card? A. To ask them if they wanted a card.

44. Q. What else did they say he should do? A. Well, I don't remember.

45. Q. What, if anything, was said about stopping the men who wanted to go into the factory in order to get work? A. I don't remember of anything said in regards to the men.

46. Q. Was anything said at that meeting, that you now recall, with reference to how the strike should be conducted? A. No, sir.

47. Q. Or by any person there in response to the question or inquiry, or whether there was anything said by Mr. Bessette about the conducting of the strike? A. Only in regard to the card matter; that is all I remember. (Record, pages 170-171.)

Witness described how Bessette and others went to a Monon train to see if any men got off, Bessette saying, "Don't let any of them escape; if any of them get away we will get them;" witness saw Bessette around the Monon depot several times watching trains, but never saw any men get off the cars who were going to Conkey's; saw Bessette with Murtis, Weeks, Schleicher and Dunlavey, but did not remember to have seen him with Alting; heard Bessette tell about his giving his card to Armstrong, foreman of Conkey's composing room; "It's a good joke," Bessette said, "I met Mr. Arm-

strong and asked him if I could get a job. 'Well,' he says, 'are you a printer?' and I says, 'Yes.' 'You come on in and I will give you a job,'" so with that he pulled out his card and handed it to Mr. Armstrong; "'Oh,' he says, 'of course, you do not want a job,'" and he says, "I think I will go up there to his house to-night and see if I cannot get him out;" witness did not know whether Bessette went.

The following questions and answers fairly outline the cross-examination of this witness:

82. X.-Q. You understood, did you not, at the time Mr. Bessette made that remark that it was merely told as a joke A. Well, I didn't know at the time whether he was joking or not.

83. X.-Q. It was told in a spirit of levity and humor, wasn't it? Told as a joke? A. Well, I couldn't say it was a joke; I thought, though, if he could have got him out he would have done it.

84. X.-Q. Well, he didn't tell you at that time about intending to do anything improper towards Mr. Armstrong or anybody else, did he? A. Well, nothing improper; only trying to get Armstrong out, that is all.

85. X.-Q. That is, if he could persuade Mr. Armstrong to quit his work there he would do it? A. Yes.

86. X.-Q. That was the impression you got from the conversation? A. Yes, sir. (Record, page 173.)

Witness described the places where he saw Bessette and the conduct of Bessette as follows:

98. X.-Q. How far were these places from the Conkey plant? A. About a mile or a mile and a half; I couldn't judge exactly.

99. X.-Q. Well, they were up town, near the railroad station at that time. A. Yes, sir.

100. X.-Q. Not in any manner interfering with the Conkey people, were they? A. Not that I have seen.

114. X.-Q. You never heard Mr. Bessette call anybody vile names? No, sir.

115. X.-Q. Did you ever see Mr. Bessette doing anything there that wasn't gentlemanly and entirely proper? A. I never saw him doing anything out of the way; that is, in regard to not being a gentleman.

116. X.-Q. Did you ever see him commit any act of violence or commit any sort of depredation against Mr. Conkey? A. I never was with him enough to see him.

117. X.-Q. There wasn't any reason why he should suspect you or act differently in your presence or act different than when others were around? A. No, sir. (Record, pages 174-175.)

Charles Meyers testified: Witness was an electrotyper, resided at Detroit; employed in Conkey's service during the strike; previously worked there eight months and two years before; met Bessette at State and Homan streets; each explained his identity to the other; Bessette said he could not shake hands with witness—not touch him with tongs—while he worked at Conkey's; that a man who worked there was a scab and a rat.

On cross-examination Meyers could not give the name or address of his friend with whom he was talking when he met Bessette; witness, when asked if he had not been discharged because he was a metal thief, answered, "No, sir, and you can't find that in the court books in Hammond."

On redirect examination witness testified that Bessette said that men who worked during the strike could not possibly get work elsewhere. (Record, pages 176-181.)

GUS WANGEMAN testified: He was a press-feeder in Conkey's service since last May; was a striker nine weeks; went out with the pressmen; the notice of the injunction was discussed on the Sunday it was issued; saw Bessette and Alting up town four or five times; they were standing, talking about some outcome of a meeting of Chicago Typographical Union with reference to its admission of Conkey strikers; that was all witness ever heard Bessette say; he and Alting and others, but not Bessette, talked of picketing and of importing a wrecking crew to fix the people down there; saw men picketing around the plant.

36. Q. Did you ever hear Mr. Bessette say anything about interviewing men on the subject of continuing their work or discontinuing it? A. No, I did not.

37. Q. Never heard him say anything on that subject? A. No, sir; I didn't.

Witness testified, on cross-examination, that he saw Bessette in Hammond only five times and all between the last week in August and September 10; never saw Bessette except at State and Homan streets, and never saw him within a mile and a quarter of Conkey's plant; there were many streets between where Bessette was and Conkey's place; heard Bessette talk of the probable action of Chicago Typographical Union as to taking in Conkey strikers; never saw Bessette at the Conkey plant.

75. Q. Did you ever see Mr. Bessette do any picketing 'round there? A. No; I did not.

76. Q. Did you ever see Mr. Bessette or hear of Mr. Bessette using any vile language or epithet toward any person? A. I never did.

77. Q. Have you told us all you ever heard Mr. Bessette say and all you ever saw him do about there? A. I have.

Witness testified that he was one of the pickets on duty at the Conkey plant; he had heard vile and profane language used by the pickets, but did not know that others heard it; said pickets got in front of men going to the works, but the men proceeded.

114. X.-Q. There were no threats made against them? A. No, sir.

115. X.-Q. The boys simply tried to persuade them to go out? A. Yes, sir.

116. X.-Q. No violence used in any way against them? A. I didn't hear any.

* * *

179. R. Q. Well, did you learn from any of the strikers or from any of the pickets, or from Mr. Bessette or from Mr. Alting, as to the commission of assaults on persons by the wrecking crew or others? A. No; I did not.

Witness testified, on recross-examination, that he never but once heard from any person of any assault being committed on any person. The instance was related to him only in a general way by Ed Rice, a striker, who said that a man was beaten on Calumet avenue one night. (Record, pages 181-194.)

Vena R. Hunt testified: He was a clerk in the Chicago office of the Conkey Company; acted as escort for new men employed by the company at Chicago to take the place of strikers in the plant at Hammond; generally went out from Chicago on the Monon railroad at 8:30 a. m.; on arriving at Hammond, until within "two or three weeks of the present day," there would always be some of the striking pressmen at the railroad station, who would come up and talk to these men, telling them "that there was a strike on and that they ought not to be going out there; that these fellows who

were on a strike had Conkey in just the place they wanted him and if people would only stay away they would win their point and be all back there again in a short while;" if the escorted men did not seem to weaken the strikers would say they were going to win peaceably if they could, forcibly if they must; at first there were eight to a dozen strikers at the railroad station, but subsequently only a couple of them; generally Bessette would motion to the strikers where to go, and they went; they were quiet after the injunction was issued; they told me they would take care of me some time, but I never met with any obstruction after the injunction was issued; these experiences were all a mile and a half from Conkey's plant; several times there were pickets at the plant; two watchmen were maintained there; saw Alting at the depot; Alting was "going to smash" witness before the injunction was issued; heard strikers say "a fellow was beaten up pretty badly the other day;" this was told to the new men; it was also told them that the groceries would not sell to boarding houses which entertained the new men.

41. Q. What did they say, if anything, Mr. Hunt, about if these men would go to work whether they would be called scabs and other vile names by the strikers, or did they say anything of that kind to these men for the purpose of influencing them not to go to work there?

Mr. Rooker: Objected to as leading and suggestive.

The Court: Put it in a less leading shape.

42. Q. What, if anything, was said, Mr. Hunt, to these men that if they did go to work that they would be called names by other people; if they said anything of the kind, what did they say they would be called on account of working at the Conkey plant? A. I didn't hear anything in regard to that at all." (Record, pages 198-199.)

On cross-examination the witness testified that he never heard anybody call any of the people witness had in escort scabs or rats, and he did not think there was ever any violence committed; since the restraining order was issued witness had taken down to the plant from eighty-five to one hundred men, of whom the strikers had induced from twelve to fifteen to join them.

60. X.-Q. Do you know, Mr. Hunt, whether or not the men that you lost there were actually seeking work or were somebody that wanted to travel down with you and find out what the Conkey people were doing? A. Well, to the best of our knowledge they were men who wanted to go to work. We always questioned them carefully and didn't take them unless we felt satisfied they wanted to go to work.

61. X.-Q. Did you tell them the same things that they always learned from the strikers? A. Yes, sir; we told them the situation down there. We didn't take anybody that wasn't perfectly willing to go.

62. X.-Q. You took nobody but what he said he was willing to go? A. No, sir.

63. X.-Q. When these men actually quit, what did they say to you, or what did you say to them about their not continuing on down to the plant A. Well, if they went off with other fellows I didn't chase after them. I always asked them if they wouldn't come along. If they didn't choose to do so I let them go.

64. X.-Q. They would smile at you and tell you no, wouldn't they? A. That was the size of it; yes, sir.

65. X.-Q. Now, you say you saw Mr. Bessette 'round there. Did you ever have a conversation with Mr. Bessette? A. No, sir; I never did.

66 X.-Q. Did you ever ask Mr. Bessette not to interfere with you or the men with you? A. No, sir; I did not.

67. X.-Q. Why didn't you tell them you would like to go unmolested? A. I didn't have anything to do with him. I attended to my business as best I could.

68. X.-Q. You never made any complaint to Mr. Bessette that his action was offensive to you? A. No, sir.

69. X.-Q. You never heard anybody else complain to him? A. I never heard anybody complain to him.

70. X.-Q. Did you ever see him do anything there that was rude or violent in any way? A. No; I didn't.

71. X.-Q. Or ever hear him use any improper language? A. No, sir; he was always 'round at the depot, or nearly always, and always seemed to be giving directions to the pickets around there.

72. X.-Q. What directions did you hear him giving? A. I didn't hear him give any directions. I seen him motion a number of times when we started down the platform, and the other men that was there they would all follow us.

73. X.-Q. How soon did you see him make the first motion of that kind A. How soon after the strike began; after the injunction was issued? I think it was right after the injunction was issued.

74 X.-Q. He wasn't there, then, before the restraining order was issued; was he? A. I don't remember seeing him, but I may be mistaken.

75. X.-Q. At least, he didn't attract your attention prior to that time? A. I didn't see him prior to that time. (Record, pages 200-201.)

Witness further testified that there were strikers at Speling and Homan streets, as well as at the railroad station; that at these points the city was densely built up; that many men had quit work, and he knew of no engagements that would take them elsewhere;

the Conkey plant was a mile and a quarter distant; witness never met any strikers or pickets except up in the thickly populated part of the city, and never saw any demonstration of violence toward any of the men he had with him at any time. Witness never knew of anybody getting hurt, except Horton.

91. X.-Q. Do you know who the fellow was that you spoke of that was hurt? A. His name is Horton.

92. X.-Q. Do you know what he had his fight about? A. No, I do not.

93. X.-Q. Do you know whether or not he had his fight over his connection with the Conkey Company? A. Well, he told me that the wrecking crew they sent out from Chicago got after him that night; that is all I know of it.

94. X.-Q. Did you ever hear of the wrecking crew there hurting anybody except Horton? A. Yes; one other man told me about it.

95. X.-Q. What was the name of that man A. A man that was a witness here.

96. X.-Q. Did he get hurt? A. No, I don't think he did.

97. X.-Q. Horton was the only man that got hurt? A. As far as I know.

98. X.-Q. Do you know whether he got hurt or whether that was simply a ruse made up by Horton to gain the favor of the Conkey Company? A. Well, he told me that. I don't know why he should tell me that if it wasn't so.

99. X.-Q. He told you because he knew you were in the office of the Conkey Company? A. He was in the office of the Conkey Company when he told me.

100. X.-Q. How far was the office from his place of employment? A. He wasn't working anywhere.

101. X.-Q. How far was your office from the place where he was employed to work? A. Our office?

102. X.-Q. Yes. A. Our Chicago office is about twenty-two miles. He was up there on some business. He was waiting to see somebody at the Chicago office and I talked with him a few minutes.

103. X.-Q. He wanted to see somebody up there and tell them about the wrecking crew, didn't he A. I don't know, I am sure.

D. R. Huntington testified as to his meeting O'Brien, Colbert, Harding, Bessette and Spires (whom witness calls Sievers or Stevers) in Fitzpatrick's saloon; was escorted to the place by a boy named Stone, who came to Huntington's room in their boarding house without invitation; witness was afraid not to go with Stone; he narrated the events of the meeting which he had previously described in his affidavit filed with the petition for attachment (Record, pages 66-68); Bessette used the telephone to learn who was coming down from Chicago.

On cross-examination witness accounted for the discrepancies between his affidavit and his testimony on the ground that when he made the affidavit he did not tell the whole truth, because he desired to shield Chicago Typographical Union; the affidavit made by witness was introduced in impeachment (Record, page 210); the boarding house in which Huntington was living was also the boarding house of the boy Stone. Witness described the boarding house as a kind of headquarters for the strikers. It seems that Huntington was a sort of detective who was lodged in that boarding house. He swore: "I stayed in that headquarters and seen telephone messages to watch for such and such men coming up there to town." (Record, pages 212, Q. 94.) It also seems that Huntington was a professional "strike-breaker" rather than one of

those "industriously pursuing his God-given right to labor," whom the trial court so often mentioned. He testified:

199. X.-Q. Now, Mr. Huntington, you have a great deal of feeling against the Typographical Union and against Mr. Bessette, have you not? A. I have considerable feeling against the Typographical Union.

200. X.-Q. How long have you entertained that bitterness of feeling A. For a great many years.

201. X.-Q. To what extent has that bitterness of feeling influenced your conduct? A. Well, I have gone out in times of a strike and taken men into work, and I stand ready and willing to do it again.

202. X.-Q. How long have you been pursuing that course, Mr. Huntington? A. I couldn't tell you the number of years.

203. X.-Q. How many years have you gotten men to take the place of people who quit work? A. Good many times.

204. X.-Q. And you were doing that always because of your hostility to the Typographical Union? A. Yes.

205. X.-Q. Do you have that same feeling against Mr. Bessette that you have toward the Typographical Union? A. No, I have no feeling against Mr. Bessette particularly until he molests me, and the man that molests me or my family he must look out, for I am going after him.

206. X.-Q. And to what extent does that bitterness influence your testimony in this case? A. Not one particle.

207. X.-Q. To what extent did that influence your deposition that you made before Mr. Bogle on the 10th of September? A. I stated there the truth.

208. X.-Q. The question is, did it influence you, your feeling of hostility toward the Typographical Union or Mr. Bessette, did

it influence you as to what you stated in your affidavit? A. No, sir, it didn't influence me a particle at the time I made the affidavit.

209. X.-Q. Did you ever have any experience with this wrecking crew yourself?

The Court: You need not answer that unless it is confined to this wrecking crew at Hammond.

210. X.-Q. That is what I meant, at Conkey's? A. No, sir.

211. X.-Q. Did you ever see the wrecking crews or members of it? A. No, sir. (Record, page 221)

Witness testified that when he quit at Conkey's he went to Chicago Typographical Union and got a working card, but that he did not apply for work. Witness combined his detective functions with his strike-breaking record as follows:

155. X.-Q. You did know at the time you had these conversations that the Chicago Typographical Union had adopted a resolution withholding from its officers the right to give assurances to any man in Conkey's that he could get into the Chicago Typographical Union No. 16? A. Well, I had such knowledge; yes, sir.

156. X.-Q. How long had you had that knowledge prior to the time you met Bessette and Colbert in Fitzpatrick's saloon? A. Well, that meeting was on the last Saturday in the month, and I got the report from that meeting about an hour after it adjourned.

157. X.-Q. That is, the last Sunday in August you learned about that fact, and you met these gentlemen about the 2nd of September. Now, will you tell the Court what interest, if any, you had at that time in knowing what action the Chicago Typographical Union would take with respect to the Conkey men? A. Well, the interest I had in it, I would like to keep posted on what was going on.

The Court: That was a sort of academic interest.

The Witness: I wanted to know what was going on in the printing trade, and I think I kept myself pretty well posted.

158. X.-Q. After you went to the Typographical Union in Chicago and got your card or permit, did you make application to work in Chicago in union offices? A. Why, certainly not.

159. X.-Q. Made no effort whatever to use it? A. Why, no.

160. X.-Q. How long did you continue without any effort to get work? A. How long did I continue?

161. X.-Q. Yes? A. I didn't try to get any work in Chicago at all. I didn't want to work there. I wanted to work in Hammond.

162. X.-Q. How long did you keep away from Conkey's? A. Well, I went home Wednesday, I think it was, and I wasn't able to get out of my bed until Monday. And I come down to their office in Chicago and told them I wanted to go to work, and I came out to Hammond the next day and have been there ever since.

163. X.-Q. Have you got the card now that you got when you went in to their headquarters? A. Which, the permit?

164. X.-Q. Yes. A. No, I threw it away; gave it to my children to play with.

165. X.-Q. You say you got that card the day before you went to Conkey's? A. I got it the day I went into Chicago from Hammond. I went to headquarters and got it. (Record, pages 217-218.)

Witness testified as to a search warrant being served upon him and his house searched for a registered label or trade-mark of the Chicago Typographical Union which had been stolen from a Chicago publishing house; witness was using the label upon work he did in a little plant at his home. (Record, pages 207-208.)

Louis Florence testified: He was a striker and did picket duty under John Dunlavey; Harry Alting was in charge and told witness he (Alting) "was going to put a wrecking crew out and wanted me to join it;" witness had seen Bessette on the streets at Hammond, but never was introduced; saw Bessette with Alting two or three times; about the middle of August he was one of a party of boys who said they were going to meet a pressman named Keiser and beat him up; the members of that party were all from the Conkey works, and none was from Chicago; Bessette was not there; never heard Bessette countenance any violence or vile language, or anything of that sort, but he was always conducting himself as a gentleman; witness knew nothing of any picketing after the restraining order. (Record, pages 223-229.)

Robert Armstrong's affidavit: Affiant was a foreman at Conkey's; saw Ed Bessette step out of a band of pickets and go to a street car in which affiant was about to go down town; Bessette asked for work and was told to come to the plant next morning; Bessette then handed his card to Armstrong, showing Bessette's connection with the union; "I then said that I didn't think he wanted to work here," to which Bessette replied, "I should say not;" subsequently Bessette called at affiant's residence; "He told me he wanted to take my application to the Chicago Typographical Union. I refused to allow him to present my name, and we then together discussed the Chicago Typographical Union. He told me that any time I cared to join the union I could have a card." (Record, pages 230-239.)

Thomas S. Bailey's affidavit: Had seen pickets and evaded them. Recognized among them Gross, Dunlavey and Rutz. (Record, pages 239-241.)

JAKE ENGEL's affidavit: Affiant was a former employe of Conkey and returned to the service after the strike; met Harry Alting, who threatened to get some fellows to whip affiant; on September 10 affiant and Maximillian Keiser were assaulted by John Dunlavey, Harry Alting, Jack Sugrue, ——— Hoek, William Rutz, ——— Eldridge, ——— Gross and Wright and others, whom affiant could identify if he could see their faces. (Record, pages 241-247.)

MAXIMILLIAN KEISER's affidavit: Was present with Jake Engel and shared in the assult of September 10 committed by John Sugrue, John Dunlavey, Harry Alting and Harry Morrison. (Record, pages 248-254.)

JAMES FRANCIS WATERS' affidavit: While enroute to work at Conkey's August 31, met five striking employes, who applied to affiant vile epithets. (Record, pages 254-255.)

C. F. WILKINSON's affidavit: Was called vile names by strikers on August 31. (Record, pages 255-256.)

GEORGE LLOYD's affidavit: "I attended several meetings of the other striking employes of the Conkey company. At these meetings Harry Alting presided and was the moving spirit. He frequently addressed the meetings. All of the meetings which I attended were held after the injunction in this case was issued. At them names were read by the president, Harry Alting, of different persons who were appointed on picket duty. There were two leaders of the bands of pickets. One stationed at the Conkey Company's plant and the other one down town, who had charge of the picketing at these two places. The leader of the pickets in and about the Conkey Company's plant was John Dunlavey, and William Rutz was the leader of the pickets down town." (Record, pages 256-258.)

HARRY OAKLAND's affidavit: Affiant had been accosted and insulted by pickets and by John Dunlavey on September 7, who used vile language. (Record, pages 258-259.)

FRED FORSHALL's affidavit: Have already made two affidavits; was accosted by strikers and insulted. (Record, pages 260-261.)

MR. MILTON HILL's affidavit: Was with Harry Duel, when strikers applied to them vile epithets. (Record, pages 262-263.)

HARRY DUEL's affidavit: Confirms the affidavit of Milton Hill. (Record, pages 263-264.)

CHARLES MINGER's affidavit: Describes an assault committed on him August 30 by a man named Henning. (Record, pages 264-265.)

DANIEL J. SHEEHAN's affidavit: Describes the assault on Charles Minger. (Record, pages 265-266.)

ABRAHAM GREENBAUM's affidavit: Describes the assault on Charles Minger. (Record, pages 267-268.)

DANA SUMMERS' affidavit: Described the arrest of Henning for assault on Minger and the interest taken by Gus Collins, a striker, in that arrest. (Record, pages 268-269.)

JOHN B. HORTON's two affidavits: Pressfeeder, employed at Chicago to work for Conkey, and was told of the strike at the time of employment; had a fight with strikers and told his troubles to policeman No. 2, who refused to arrest the assailant without a warrant. "For fear that my life was in danger I finally consented to leave Hammond, Indiana, and left there on Friday, September 13, 1901, the circumstances surrounding my leaving Hammond being as follows: * * * And further deponent saith not." (Record, pages 270-273.)

Maggie Essler's affidavit: Both before and after the injunction saw many strikers doing picket duty, but the only ones she recognized were John Dunlavey and
these bands of men frequently threatened her, and Dunlavey came to her house, where he used indecent language. (Record, pages 273-274.)

Lena Rupple's affidavit: Was called vile names and threatened by John Ackerman and John Dunlavey. (Record, pages 275-276.)

Anna Rupple's affidavit: Similar to that of Lena Rupple. (Record, pages 276-277.)

Mollie Rutz's affidavit: Similar to that of Lena Rupple. (Record, pages 277-278.)

Anna Gehrke's affidavit: Similar to that of Lena Rupple.

Alfred E. Wilcox's affidavit: He was general manager of W. B. Conkey Company; losses of the company caused by the violation of the restraining order will exceed $100 daily from August 24 to October 22. (Record, pages 281-282.)

The Defendant's Evidence: "We are trying the question whether or not, being there, he (Bessette) did anything that was unlawful or a violation of the injunction. That's all."—Judge Baker in striking out part of Bessette's answer. (Record, pages 310-311.)

For as much as the theory of the prosecution does not depend upon the evidence of the defendant, that evidence will be very briefly summarized. The verified answer of Bessette was admitted. (Record, pages 283-311.) Subsequently so much of the answer as pertained to D. R. Huntington's unlawful use of the label was

struck out. (Record, pages 307-311.) The answer included the arbitration agreement between the American Newspaper Publishers' Association and the International Typographical Union. (Record, pages 291-296.) Also, the agreement between the same Union and the United Typothetae of America. (Record, pages 306-307.) This answer has previously been summarized. (Ante, pages 27-39.)

The order of the Court, upon which the writ of citation issued against Bessette, was predicated. It requires him to answer for the violation of an injunction. (Record, page 311.)

The order served upon Bessette, showing he was to answer for the violation of a restraining order. (Record, pages 312-313.)

The affidavit of Timothy J. O'Brien. It sustains the answer of Bessette as to the meeting with Huntington in Fitzpatrick's saloon. (Record, pages 313-315.)

The affidavit of John C. Harding sustaining the answer of Bessette as to the Huntington charges. (Record, pages 315-317.)

The affidavit of E. W. Tatum, denying participation in any act of violence; any participation with Bessette in any act of violence or unlawful act, and denying any knowledge of or acquaintance with Henning prior to the assault on Horton.

Michael Colbert's testimony: He was president of Chicago Typographical Union and a printer thirty-one years; been in the service of the Chicago Tribune twenty-one years; knew Edward Bessette, a printer, employed on the Chicago Inter Ocean; there are 2,200 members of Chicago Typographical Union; the hours of labor in the craft are such that the only concurrent hour for refreshment available to all the branches of the craft is 2 p. m. on Sunday, at which hour all unions meet monthly; at the time under inquiry did not know Harry Alting, William Rutz, Gus Collins,

Theodore Hoberg, John Ackerman, John Henning or Harry Morrison; had since met Dunlavey, Ackerman and Morrison; visited Hammond in company with Bessette and Harding; first visit was August 27 and again on August 30, and on Indiana's Labor Day, September 2; was told by a printer in Hammond that a man named Huntington wanted a conference at Fitzpatrick's saloon; witness made inquiry as to where that place was and at the appointed hour he went there; Bessette, Spires and O'Brien were there; some one remarked that "Huntington wanted to see me and he would be down there in a little while;" party went into a back room and sat down to wait; Huntington and Stone came together; describes the interviews with Huntington, similar to the statement in Bessette's answer; defined for the Court the craft's use of the terms union, non-union and rat, the rules of apprenticeship, the contracts with publishers and how emergencies in the service are met by the unions when large numbers of extra men are required, as instanced by the assassination of President McKinley.

At this point in the trial the examination was participated in by Judge Baker, who expressed his views as to labor unions. (Record, pages 321-331.)

Witness further testified that it was against both the policy and the law of the union, punishable by expulsion, for any officer or member to commit or advise any act of violence, either in case of strike or otherwise; the Franklin Union, at Chicago, is an association of pressfeeders, an independent organization and without the slightest affiliation with the Typographical Union; denied participation, either directly or indirectly, in any act charged by the plaintiff; stated the instructions to Bessette, the action of the union with respect to Conkey's men, reviewed the controversy between Conkey and the union, described the union labels and stated the objects of his union's sending a representative to Hammond.

On cross-examination witness testified that Conkey moved his plant from Chicago to Hammond with the declaration that he was going to run non-union; Conkey had run a union office without having any trouble; witness had been absent from Chicago, and on returning learned that Conkey's pressmen had organized a union and that there was trouble; there was a possibility of the Pressmen's Union getting recognition at Conkey's and putting in the registered label of the Typographical Union.

By the Court: 277 X.-Q. Let me ask you right there! Is it your idea that there is any earthly possibility of a strike succeeding without being accompanied by intimidation or violence, any earthly possibility of its succeeding? A. There have been a number of them in the Typographical Union.

278 X.-Q. Well, I never have heard of any; and I don't see how it could happen. If men are left perfectly free and unmolested to act and fill the places of those who have quit, I don't see how a strike can succeed. *I have always had an impression that in order for a strike to succeed it was necessary to kill somebody or terrorize somebody?* A. That is not the record in our organization, Your Honor, taking it all over the country. The printer, as a rule, is not a fighting man; his business and his associations would never make him that kind. He must have a certain amount of education in order to be a printer, and he must have a certain amount of intelligence in order to be educated, and men that are capable of being reasoned with are usually reached in that way. A printer is a reasonable man to deal with, as you will find; if you attempt to use force with him he is as independent as any man can be. (*Domenico vs. Alaska Packers' Assn.*, 112 Fed. Rep. 554.)

The witness reviewed at length conversations with Huntington, and the acts, objects and purposes of the Typographical Union. (Record, pages 319-557.)

The Constitution and Laws of the International Typographical Union. (Record, pages 376-452.)

The Charter, Deed and Regulations of the Childs-Drexel Home for Union Printers. (Record, pages 428-450.)

The United Typothetae Agreement. (Record, pages 450-451.)

Chicago Typographical Union Constitution and By-Laws. (Record, pages 452-497.)

Cemetery Statistics Chicago Typographical Union. (Record, pages 497-521.)

Union Printers' Home Prospectus and Reports. (Record, pages 522-556.)

George W. Day testified: Was president of Chicago Typographical Union in 1897-1898, and acquainted with W. B. Conkey; identified the contract with the union under which the Conkey plant was operated in Chicago; when Conkey moved to Hammond he discharged his union men; witness went there to see Conkey with a view of adjusting any troubles, but the Court refused to permit him to relate how he was assaulted by Conkey and others, and required to flee for safety. (Record, pages 557-560.)

George Thompson testified: Was a printer, a member of the Chicago Union, and knew W. B. Conkey; went to Hammond in August, 1898, to see Conkey. The Court refused to permit him to relate how Conkey had witness arrested and held in prison without trial. (Record, page 561.)

C. E. Hawkes testified: Was first vice-president of the International Typographical Union and helped make the contract with the United Typothetæ, *supra*. (Record, pages 306-307.) The Court refused to accept the testimony as to Conkey's membership in the United Typothetæ at the time. (Record, pages 561-562.)

William J. Spires testified: As a representative of Chicago Typographical Union, was at Hammond with Mr. Bessette; related the Huntington incident as described, *supra*, by O'Brien, Harding, Colbert and the answer of Bessette; described the conduct of Bessette as always proper and worthy of respect. (Record, pages 562-571.)

Bertha Molenski testified: Was a bindery girl in the service of Conkey at Hammond; weekly wages in the bindery were from $2.50 to $4.50; a union was organized and the girls discharged. The Court refused to hear testimony that wages for the same services in Chicago were $8.00 to $9.00 per week; also that both Conkey and the forewoman of his bindery swore at the girls and used vile language in their presence; also that the organization of the union was for the purpose of obtaining fair wages and fair conditions of service. (Record, pages 571-574.)

Ida Adams' affidavit: This was rejected by the Court. It related to the experiences of the bindery girls at Conkey's. (Record, pages 575-576.)

Claudie McAnally's affidavit: Similar to that of Ida Adams, and same ruling thereon by the Court. (Record, pages 576-577.)

John Dunlavey's affidavit: That for a long time prior to the filing of the original bill in this suit affiant had been a citizen and resident of Illinois; that several months before the bringing of this

suit affiant had explained to the foreman of the W. B. Conkey Company why affiant was residing in Illinois; that affiant is acquainted with the following named defendants, who at the time of the filing of the original bill were likewise citizens and residents of Illinois, viz.: Edward Wheed, alias Snitzer; Oscar Kohlstadt and Wheeler Armstrong; that, upon the belief of affiant, the complainant's averment that affiant was a citizen and resident of Illinois was made for the fraudulent purpose of having the Court assume a jurisdiction to which it was not lawfully entitled. (Record, pages 577-579.)

Vera R. Hunt, recalled: Identified a letter written October 4, 1901, by the W. B. Conkey Company to William Volkman, who is charged in the petition along with Bessette with violating the restraining order. The letter says, "We do not know why you left our employ, etc.," and asks him to return to the service at "a very much larger salary than we could pay to one not experienced." (Record, pages 580-581.)

Michael Colbert, recalled, testified: The Conkey men who made application for membership in the Chicago Typographical Union were admitted. (Record, page 581.)

Bertha Molenski, recalled, testified: The bindery girls quit work August 20; at that time did not know Bessette or any other member of Chicago Typographical Union; first met Bessette at the New England supper given between September 2 and September 11. (Record, pages 581-582.)

Clara Portz testified: Was a bindery girl at Conkey's; quit there and some two weeks later first met Bessette. (Record, pages 582-584.)

James M. Lynch testified: President of the International Typographical Union; its membership is approximately 40,000 and it furnishes the labor in some 8,000 to 10,000 printing establishments. The Court refused to hear testimony as to a controversy between the Printers' Union on one hand, with the Pressmen's and Bookbinders' Unions on the other hand, over the union label; and refused to hear testimony as to the objects of the Typographical Union. (Record, pages 584-585.)

William J. Spires, recalled, testified: Described the street car meeting between Mr. Bessette and Robert Armstrong, and said both those gentlemen at the time treated the card incident as a ludicrous situation and a joke, and laughed heartily over it; denied that there had been conferences with Alting, etc. (Record, pages 586-587.)

Henry C. Pettit, United States Marshal, testified: He served the writ of citation on Mr. Bessette; described the men as being orderly; they assisted the officer by pointing out the men named in the writ. (Record, pages 588-591.)

B. Frank Schmid testified: State Labor Commissioner; visited Hammond in the performance of his official duties concerning the Conkey strike; conferred with W. B. Conkey; during the three or four days witness was at Hammond he saw nothing out of order at all in any way, shape or form; everything was quiet and peaceable; everybody was behaving himself; everybody were behaving themselves; was with Mr. Conkey, but heard no complaint from him or any member of the company as to the conduct of Mr. Bessette. (Record, pages 591-593.)

L. P. McCormack testified: State Labor Commissioner; visited Hammond with Dr. B. Frank Schmid, associate commissioner; was introduced to Mr. Bessette by Dr. Schmid, and we

dined together; conferred with Bessette about the situation; saw him on the street several times, but never within a mile and a half or two miles of the Conkey plant; his deportment was the same as that of any other good citizen, and his conversation was the same; was told that there had been some lawlessness there prior to September 4, but witness saw none of it, nor did he see anything unusual; did not hear that strikers were intercepting trains. (Record, pages 593-597.)

III.

ERRORS RELIED UPON.

In the event this Court shall consent to consider the whole record it will be found that the questions of law presented are in their character two-fold, viz.:

(1) Those which are stated by the Court of Appeals in its certificate and pertain to appellate jurisdiction; and

(2) Those which arise on the record of the trial Court and address themselves to the merits of this appeal.

Under this general classification the points which may be considered are subdivided as follows, viz.:

THE QUESTIONS CERTIFIED.

For convenience the questions certified by the Court of Appeals are repeated:

> **First: Whether the Circuit Court of Appeals has jurisdiction to review an order or judgment of a Circuit Court of the United States, finding a person guilty of contempt for violation of an order of that Court and imposing a fine for the contempt.**

Second: Whether the "act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3d, 1891 (26 Stat. 826), authorizes a review by a Circuit Court of Appeals of a judgment or order of a Circuit Court of the United States, finding a person, not a party to the suit, guilty of contempt for violation of an order of that Court made in such suit, and imposing a fine for such contempt.

Third: Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by appeal.

Fourth: Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the Circuit Court of Appeals by writ of error.

THE RECORD OF THE TRIAL COURT.

While the appellant has no right to assume that this Court will consider the whole record, he nevertheless deems it his duty to state the errors relied upon in the Court of Appeals because some of them elucidate those certified questions which pertain to the method of review, i. e., whether by appeal or writ of error. It may lighten the labors of this Court to know whether in this case the review should be by the one method or the other; for if, in this case, an appeal is the proper practice, it would not be necessary to determine whether a writ of error would lie in some other case of different qualities. The assignments of error in the Circuit Court of Appeals (Record, pages 119-122) challenged twenty-five rulings of the trial Court and are summarized as follows:

1. The Court erred in overruling the plea of Edward E. Bessette to the jurisdiction of said Circuit Court over the person of said Bessette in the matter of said petition.

2. The matters charged in the petition for a rule against Bessette to show cause do not constitute a crime.

3. The matters charged against Bessette, testimony tending to prove which was given at the trial, do not constitute a crime.

4. The matters charged against Bessette as a contempt for violating the restraining order, testimony tending to prove which was given at the trial, do not constitute an offense against the administration of justice as required to be administered by the Circuit Court of the United States for the District of Indiana, punishable by fine for the use and benefit of the United States.

5. That the matters charged as contempt of Court for violating said restraining order as against Bessette, as appears by the testimony upon the trial, occurred and were committed, if they ever occurred or were committed, within the northern division of the District of Illinois and not within the District of Indiana; and that by the sixth amendment of the Constitution of the United States, Edward E. Bessette can not be tried upon said charges in the Circuit Court of the United States for the District of Indiana.

204 6. That the United States Circuit Court for the District of Indiana had no jurisdiction to enter a rule against Edward E. Bessette to show cause why he should not be punished for contempt of Court in violating said restraining orde.

7. That the Circuit Court for the United States for the District of Indiana erred in not discharging the said Edward E. Bessette upon the incoming and filing of his verified answer to the rule to show cause.

8. That the Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the bill for injunction in the cause of The W. B. Conkey Company *vs* James A. Russell *et al.*, No. 10010, in chancery, theretofore filed in said Court.

9. That the Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the restraining order theretofore made and entered by said Circuit Court in the cause of The W. B. Conkey Company *vs.* James A. Russell *et al.*

10. That the Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the Marshal's return to the restraining order theretofore made and entered and issued in said Circuit Court in the said cause of The W. B. Conkey Company *vs.* James A. Rus-
205 sell *et al.*

11. That the Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Henry P. Bogle.

12. That the Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette each of the several and separate parts of the affidavit of Henry P. Bogle to which parts said Bessette made specific objections.

13. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette evidence to prove the acts of other persons without sufficient proof of the identification of said Bessette with said acts of said other persons.

14. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Michael J. Kennedy.

15. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Jake Engle.

206 16. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Maximillian Kieser.

17. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Charles Minger.

18. The Court erred at the trial of the cause in admitting in evidence over the objection of Edward E. Bessette the affidavit of Daniel J. Sheehan.

19. The Court erred at the trial of the cause in admitting in evidence over the objection of said Edward E. Bessette each of the affidavits of John B. Horton.

20. The Court erred in the trial of the cause in admitting in evidence over the objection of Edward E. Bessette so much of the affidavit of Alfred E. Wilcox as tended to state

the damages suffered and sustained by the W. B. Conkey Company.

21. The Court erred at the trial of the cause in sustaining the objections of the W. B. Conkey Company to the admission in evidence of the affidavit of Ida Adams and in excluding the evidence offered.

207 22. The Court erred at the trial of the cause in sustaining the objections of the W. B. Conkey Company to the admission in evidence of the affidavit of John Dunlavey and in excluding the evidence offered.

23. The Court erred at the trial of the cause in sustaining the objections of the W. B. Conkey Company to the question put to the witness, James M. Lynch, by counsel for Edward E. Bessette as to a controversy between the International Pressmen and Assistants' Union and the International Brotherhood of Bookbinders on one hand and the International Typographical Union on the other hand as to the registered label of the Allied Printing Trades Council, and in excluding the evidence offered.

24. The finding of the Court is not sustained by sufficient evidence.

25. The finding of the Court is contrary to law.

BRIEF OF THE ARGUMENT.

In the third and fourth questions stated in the certificate, a line of demarcation between civil and criminal, or private and public, contempt is suggested which the appellant contends is illustrative, not only of the true state of the law, but also of some of the transgressions upon his rights by the trial Court. It will not be controverted that if there be a right of appellate review, the nature of that right is to be determined from the character of the proceeding in the trial Court. If the trial record properly presented a question arising in a suit in equity the Appellate Court would review the record on appeal. On the other hand, if the trial record properly presented a question arising in an action at law, or in a

criminal case, the Appellate Court would review the record on a writ of error or certiorari. So, it appears that the first duty we have before us is to determine whether the proceeding against Mr. Bessette in the Circuit Court was in its nature civil or criminal; whether the contempt charged was in its nature private or public; whether the proceeding contemplated a remedial fine for the use and benefit of the W. B. Conkey Company or a punitive fine going to the United States.

Some recent State cases have so aptly pointed out the distinctions which exist between the two classes of contempt that I shall be content to cite them rather than to state the various rules abstractly, or to burden the Court with many authorities.

Lester vs. People, 150 Ill. 408; S. C. 41 Am. St. Rep. 375, was an appeal from an order fining Lester for contempt of Court for refusing to comply with an order for the production of papers. Held: Civil contempt and reviewable on appeal upon entering a judgment of conviction and imposing a fine.

People vs. Court of Oyer and Terminer, 101 N. Y. 245, was a writ of certiorari to review a judgment convicting and fining a juror for contempt. Speaking of the two classes of contempt the Court said: "In one class are grouped cases whose occasion is an injury or wrong done to a party who is a suitor before the Court, and has established a claim upon its protection; and which result in a money indemnity to the litigant, or a compulsory act or omission enforced for his benefit. In these cases the authority of the Court is indeed vindicated, but it is, after a manner, lent to the suitor for his safety and vindicated for his sole benefit. The authority is exerted in his behalf as a private individual, and the fine imposed is measured by his loss and goes to him as indemnity; and imprisonment, if ordered, is awarded, not as punishment, but

as a means to an end, and that end the benefit of the suitor in some act or omission compelled which are essential to his particular rights of person or property. * * * These cases have been usually described as proceedings for the enforcement of civil remedies and more briefly as civil contempts; and because the great volume of instances occur in the progress of civil actions; but they may also occur in criminal actions or proceedings as we shall presently see, and constitute then what I imagine the learned counsel for the appellant had in his mind when he spoke of "*quasi* civil contempts." If we describe this first class of contempts as private contempts because their occasion and result is primarily, and in the main, the vindication of private rights, we shall avoid confusion or misapprehension. The second class of contempts consists of those whose cause and result are a violation of the rights of the public as represented by their constituted legal tribunals, and a punishment for the wrong in the interest of public justice and not in the interest of an individual litigant. In these cases if a fine is imposed its maximum is limited by a fixed general law and not at all by the needs of individuals; and its proceeds when collected go into the public treasury and not into the purse of an individual suitor. The fine is punishment rather than indemnity, and if imprisonment is added, it is in the interest of public justice and purely as a penalty and not at all as a means of securing indemnity to an individual. Necessarily these contempts in their origin and punishment partake of the nature of crimes, which are violations of public law and end in the vindication of public justice; and hence are named criminal contempts."

Holbrook vs. Ford, 153 Ill. 633, was an appeal from a judgment convicting a creditor of contempt of Court for attaching property in the custody of a receiver. Held: Civil contempt, and an appeal from the order of commitment was entertained.

Farmers Loan and Trust Company vs. Bankers and Merchants Telegraph Co., 148 N. Y. 315, was an appeal from a decree in which it was shown that an attaching creditor was amenable for contempt in disturbing the possession of a receiver. The Court of Appeals reviewed the order on appeal.

Remedial fines, imposed for the vindication of the private rights of suitors, have been reviewed by this Court on appeal. See Brown on Jurisdiction, secs. 118, 119.

Worden vs. Searles, 121 U. S. 14, was an appeal from a decree in equity. In the course of the suit orders had been entered imposing fines for contempt. This Court reviewed the judgments entered in the contempt proceedings and pointed out some of the distinctions which exist between those cases in which the proceedings are remedial and those wherein punishment is sought.

In *Seaward vs. Paterson*, 76 Law T. (N. S.) 215, decided by the Court of Appeal in England it was held that one not a party to an injunction could be punished for contempt only in the event his acts arose to the magnitude of obstructing the administration of justice. Commenting on the distinctions between the two classes of contempt the Court said:

> "Murray was not a party, either first or last. Now, let us pause and consider upon what jurisdiction the Court can proceed against Murray. There is no injunction against him. He is no more bound by that injunction than any other member of the public. He is, however, bound, like other members of the public, not to interfere with and not to obstruct the course of justice, and the case made against him must be this, if anything; not that he has technically infringed the injunction, which has not been granted against him in any sense of the word, but that he has been aiding and abetting others in setting the Court at defiance, and deliberately treating the order of the Court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is

no jurisdiction to attach him for contempt as distinguished, from a breach of the injunction which has a technical meaning. * * * The notice of motion to commit for breach of injunction, which is technically wrong unless he is bound by the injunction, and the notice of motion to commit a man for contempt of Court and not because he is bound by the injunction by being a party to the case or anything of that kind, but because he is conducting himself so as to obstruct the course of justice, are totally different things. The difference is very marked. In one case the party who is bound by the injunction is proceeded against. The proceedings against him are for the purpose of enforcing the order of the Court for the benefit of the person who got the order. In the other case the Court will not allow its process to be set at naught, and treated with contempt. The consequence is this: That in the one case the party who is interested in enforcing the order is enforcing it for his own benefit, while in the other case, if the order of the Court has been contumaciously set at naught, he can not settle it with the person so acting, and save that person the consequence of his act. The difference between the two kinds of contempt is well known, although in some cases there may be a little difficulty in saying on which side of the line they fall."

In *Phillips vs. Detroit*, 19 Fed. Cas. 512, Mr. Justice Brown, then on the Circuit, commenting on the two classes of contempt, said: "In *Wellesley vs. Earl of Mornington*, 11 Beav. 180, 181, an injunction was issued against the defendant, but it did not extend in terms to 'his servants and agents.' A motion having been made to commit his agent for a breach of the injunction, it was held irregular; but it was afterwards decided that if he had knowledge of the writ he might be committed for the contempt, although not for the breach of the injunction. See also *People vs. Sturlevant*, 9 N. Y. 263, 267; *Bank Com'rs vs. City Bank of Buffalo*, 6 Paige, 497; 1 Barb. Ch. Pr. 633; High Inj. sec 853, 854, 862, 863; *Safford vs. People*, 85 Ill. 558."

The foregoing authorities are sufficient, it would seem, to warrant the answer that prior to the act of Congress creating Circuit Courts of Appeals, an appeal would lie to review a judgment committing for contempt in civil or private cases. It is a question of first impression whether under the statute the Circuit Court of Appeals may exercise that jurisdiction which was formerly exercised by this Court. The Court of Appeals is a statutory Court and the act gives it jurisdiction of all appeals and writs of error other than those which lie to this Court. It seems that the true rule is that unless the contempt proceeding presents some question exclusively cognizable by this Court that the jurisdiction as between this Court and the Court of Appeals is to be determined from the record in the suit to which the contempt proceeding is auxiliary; that this Court should exercise the jurisdiction if it have, under the law, the jurisdiction of the principal suit; that the Court of Appeals should exercise the jurisdiction if it have, under the law, the jurisdiction of the principal suit.

If this Court shall do more than give an abstract answer to the questions certified by the Court of Appeals; if this Court shall make an exposition of the law by its answers, applying them to this case we are persuaded it will find that this proceeding was carried on in the trial Court under the administration of the W. B. Conkey Company, whose counsel directed the service and return of process, assembled the evidence, conducted the trial and are here resisting the rights of the appellant. The nature of the charge, as well as the circumstances of the administration of the case, will convince this Court that the proceeding is civil. If we look to the law for an exemplification of criminal contempt, it will be found that the limitations in that branch of jurisprudence exclude this case from that class. Congress has not abandoned the Courts to

their own ingenuity to determine what may be offenses against them, nor has Congress required the Courts to contrive how they shall protect the administration of justice against obstruction.

Before passing to the various acts of Congress let us briefly survey the common law, to determine how the Courts of England looked upon efforts to thwart the correct administration of justice and what the duties of Congress were in the matter of conserving the administration of justice.

The statute, 33 Edward I, *de conspiratoribus*, was in these words:

> "Conspirators, be they that do confeder, or bind themselves by oath, covenant or other alliance, that every of them shall aid and bear the other falsely and maliciously to indite, or cause to indite, or falsely to move or maintain pleas; and also, such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees to maintain their malicious enterprises; and this extendeth as well to the takers as to the givers. And stewards and bailiffs of great lords, which, by their seignory office or power, undertake to bear or maintain quarrels, pleas or debates that concern other parties than such as touch the estate of their lords or themselves."

The annals of jurisprudence leave no doubt as to the antiquity at common law of the offenses described by the statute. In 3 Coke's Institutes 143, and 1 Hawk. P. C. 193, Chap. 72, Sec. 9, it is said that the villenous judgment is given by the common law, and not by any statute against those convicted of a conspiracy. The villenous judgment was known only to the common law. It never could have been given unless conspiracy was an offense punishable at common law. In the twentieth year of the reign of Edward I, a civil remedy was provided against conspirators by the writ of conspiracy, and the statute of 28 Edward 1, Chap. 10, en-

titled, "The remedy against conspirators, false informers and embracers of juries," makes this further provision: "In right of conspirators, false informers and evil procurers of dozens, assizes and juries, the king hath povided remedy for the plaintiffs by writ out of the chancery, notwithstanding he willeth that his justices of the one bench and of the other, and justices assigned to take assizes, when they come into the country to do their office, shall, upon every plaint made unto them, award inquests thereupon without writ, and shall do right unto the plaintiffs without delay." The first clause of this statute must have reference to the writ of conspiracy provided for in the twentieth of Edward I, because there does not appear to be any other such writ, and according to 2 Institutes 562, it was but an affirmance of the common law. These provisions for private remedies against conspirators came to us as a part of the common law. And it is clear that the statute does not embrace all the grounds covered by the common law, because it was never questioned that a conspiracy to commit any felony, as to rob or murder, etc., or a misdemeanor, as to cheat by false public tokens, etc., was an indictable offense. The statute was treated in England as being declaratory of the common law only so far as it went, doubtless for the purpose of removing questions which may have existed in relation to the conspiracies it enumerated, and it left to the common law possession of the ground occupied by it, beyond the provisions of the statute. In the Book of Assizes, 27 Edward III, Chap. 44, it is said that "inquiry shall be made concerning conspirators and confederates who bind themselves by oath, covenant, or other agreement, that each will support the enterprises of the other, whether true or false." The position that "a confederacy, each to maintain the other, whether the matter be true or false," is a common law offense, is distinctly adopted in 1 Hawk. P. C. 190, Chap. 72, and 9 Coke's Rep. 56 (the Poulterer's case), and the

principle of the case noted in the Book of Assizes, namely: That conspiracies are punishable at common law, though nothing be put in execution, is fully recognized in the Poulterer's case, and this further principle is also laid down, that the law punishes the conspiracy "to the end to prevent the unlawful act." On an information against Breeton, Townsend et al., Noy 103, for the suppression of a will to the prejudice of Egerton, all the defendants but one were convicted and fined. This was a case of fraud effected by a conspiracy, and the injury was to an individual. The suppression of a will by one was not an indictable offense, but it was a fraud highly injurious to the party affected by it. It was the confederacy alone which rendered the suppression of the will criminal, and therefore the information was against the offenders jointly. In *Timberly vs. Childe*, Sid. 68, the indictment was for a conspiracy to blackmail, and on motion to quash the indictment was held good. In *Child vs. North*, 1 Keble 203, the indictment was for a conspiracy to deprive the prosecutor of his fame, and to extort money, and it was held, on a motion to quash, that the conspiracy was punishable, though the Court had no cognizance of the matter to accomplish which the conspiracy was formed. And in the same case, 1 Keble 254, on a motion in arrest, it was held that a crime was charged, although the parties to the conspiracy directed their mischief toward a subject matter beyond the jurisdiction of the Court. In *The Queen vs. Armstrong*, 1 Vent. 304, it was again held that the conspiracy was the gist of the offense. In *The Queen vs. Best*, 2 Ld. Raym. 1167, it was held, on demurrer, that a bare conspiracy was indictable. In these cases the meditated end was not accomplished by the conspirators, and therefore the conspiracy for an unlawful purpose was the offense for which the defendants were punished.

"Every indictment must contain a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation, lest the grand jury should find a bill for one offense, and the party be put upon his trial for another, without any authority." (1 Chitty's Crim. Law, 169.) And "the charge must be sufficiently explicit to explain itself, for no latitude of intention can be allowed to include anything more than is expressed." (Id. 172, 2 Burr. 1127.) In *King vs. Parsons*, 1 Bl. Rep. 392, there was a conspiracy raised to take away the character of an individual, and accuse him of murder by means of a mere phantom, having no reality, and being the mere pretense of communication with a ghost, yet the actual fact of conspiring was left to the jury to be determined according to the circumstances. The only object of the conspiracy in that case was to injure the man's reputation. In *King vs. Rispal*, 1 Bl. Rep. 368; 3 Burr. 1320, the conspiracy charged had for its object to extort money from an individual by charging him with having taken a quantity of human hair out of a bag. Upon objections, Lord Mansfield said: "The crime laid is an unlawful conspiracy; this, whether it be to charge a man with criminal acts, or such only as may affect his reputation, is fully sufficient." In *King vs. Skirret*, 1 Sid. 312, the defendants were prosecuted for reading a release to an illiterate man, in other words than those in which it was written, by which he was induced to sign it. The case was not within the statute, 33 Edward I, but the action was maintained. In *Queen vs. Mackarty*, 2 Ld. Raym. 1179, 2 East's C. L. 823, the defendants were prosecuted for selling wine under a false brand, and that action was not within any of the statutes. In *King vs. Wheatly*, 2 Burr. 1127, conspiracies to cheat were held to be unlawful. In *The Queen vs. Orbell*, 6 Mod. 42, the

indictment was for a combination to cheat an individual out of his money by getting him to bet a sum on a foot race, and prevailing on the party to run booty. The Court sustained the indictment on the ground that "being a cheat, though it was private in the particular, yet it was public in its consequence." In *The King vs. Edwards*, 8 Mod. 320, the parties were indicted for giving money to a man to marry a poor, helpless woman, incapable of marriage, for the purpose of gaining a parish settlement for her. In that case there was a motion to quash the indictment, on the ground that it was unlawful to marry a woman and give her a portion, but the object of the conspiracy being to impose a pauper upon the parish the action was sustained. In *King vs. Cope*, 1 Str. 144, the prosecution was for a conspiracy to ruin the trade of the card-maker to the King, by bribing his apprentices to put grease into the paste, whereby the cards were spoiled. The putting of grease into paste, if done by an individual, would not have been a crime, but a mere private injury, for which the party would have been left to his civil remedy, but the conspiracy was held to constitute an offense. In *The King vs. Eccles*, 1 Leache's C. C. 274, the indictment was for a conspiracy to impoverish a tailor. The action was sustained, and the case became a leading one in jurisprudence. In *The King vs. Leigh*, 2 Macklin's Life 217, it was held that an indictment would lie for a conspiracy to impoverish an actor by driving or hissing him off the stage, and the same rule was enforced in a like case, in *Clifford vs. Brandon*, 2 Campb. 358. In *The King vs. Robinson*, 1 Leach's C. C. 37, the defendants were indicted for a conspiracy to raise a false title in Mary Robinson to the estate of Richard Holland, by marrying Taylor under the assumed name of Richard Holland. If the defendants in that case meditated a perversion of the course of justice, as her right to Hammond's es-

tate could only have been established by judicial proceedings, it was not so charged. The action, however, was maintained because the purpose of the conspiracy was not of the gist of the crime. Otherwise the action must have failed, for "no latitude of intention can be allowed to include anything more than is expressed in an indictment."—Lord Mansfield, *The King vs. Wheatly*, 2 Burr. 1127; I Chitty's Cr. Law 172. In *The King vs. Berenger*, 3 Man. & Sel. 68, an indictment was sustained in which the conspiracy charged was to defraud the public and the conspiracy was held to be the gist of the action. In *The King vs. Mawbry*, 6 T. R. 619, there was a conspiracy to pervert the course of justice, and the offense was held to lie at the common law. By a course of decisions in England running through a space of more than four hundred years, from the reign of Edward III to the 59 George III, without a single conflicting adjudication, these points are clearly settled: 1. That the offense of conspiracy is of common law origin, and not restricted or abridged by the statute, 33 Edward I. 2. That a conspiracy to do any act that is criminal *per se*, is an indictable offense at common law, for which it can scarcely be necessary to offer any authority. 3. That an indictment will lie at common law—*first*, for a conspiracy to do an act not illegal nor punishable if done by an individual, but immoral only, as in *The King vs. Lord Gray*, and the case of *Sir Francis Blake Delaval; second*, for a conspiracy to do an act neither illegal nor immoral in an individual, but to effect a purpose which has a tendency to prejudice the public, as in *The King vs. The Journeymen Tailors of Cambridge*, for a conspiracy to raise their wages, either of whom might legally have done so, and *The King vs. Edwards; third*, for a conspiracy to extort money from another, or to injure his reputation by means not indictable if practiced by an individual, as by verbal

defamation, and that whether it be to charge him with an indictable offense or not, as in *Timberly vs. Childe; Child vs. North: The Queen vs. Armstrong; The Queen vs. Best; The King vs. Kinnersly; The Queen vs. Martham Brain; The King vs. Parsons*, and *The King vs. Rispal; fourth*, for a conspiracy to cheat and defraud a third person, accomplished by means of an act which would not in law amount to an indictable cheat, if effected by an individual, as in *Breerton vs. Townsend; The King vs. Shirrett; The Queen vs. Mackarty; The Queen vs. Orbell; The King vs. Wheatly*, and *The King vs. Lara; fifth*, for a malicious conspiracy to impoverish or ruin a third person in his trade or profession, as in *The King vs. Cope; The King vs. Eccles; The King vs. Leigh; Macklin's* case, and the case of *Clifford vs. Brandon; sixth*, for a conspiracy to defraud a third person by means of an act not *per se* unlawful, and though no person be thereby injured, as in *The King vs. Robinson, The King vs. Berenger* and *The King vs. Edwards; seventh*, for a bare conspiracy to cheat or defraud a third person, though the means of effecting it should not be determined on at the time, as in *The King vs. Gill; eighth*, that a conspiracy is a substantive offense, and punishable at common law, though nothing be done in execution of it, as in the Book of Assizes, ch. 44; *Poulterer's* case; *The King vs. Edwards; The King vs. Eccles; The King vs. Berenger*, and *The King vs. Gill*, and all the authorities, that the conspiracy is the gist of the offense; and, *ninth*, that in a prosecution for a conspiracy it is sufficient to state in the indictment the conspiracy and the object of it, and that the means by which it was intended to be accomplished need not be set out, being only matters of evidence to prove the charge, and not the crime itself, and may be perfectly indifferent, as in *The King vs. Eccles; The King vs. Gill.*

From all which it results that every conspiracy to do an unlawful act, or to do a lawful act for an illegal, fraudulent, malicious or corrupt purpose, or for a purpose which has a tendency to prejudice the public in general, is at common law an indictable offense, though nothing be done in execution of it, and no matter by what means the conspiracy was intended to be effected, which may be perfectly indifferent, and makes no ingredient of the crime, and, therefore, need not be stated in the indictment. In 1 Tremaine's P. C. 82, 83, there is an information against Turner and others for a conspiracy to destroy the reputation of one George Green, and falsely to charge him with adultery with the wife of one of the conspirators, for the purpose of extorting money from him. In 86, against Record and others, for a cheat practiced on Lady Dorothea Seymour, in prevailing on her by means of a falsehood, to advance large sums of money to them. In 91, against Wilcox and others, for cheating by conspiracy one John Dutton, of a quantity of cloth, under pretense of buying it. In 94, against Taydler and others, for a cheat by conspiracy, in drawing an absolute conveyance to themselves of the estates of two women, and persuading them to execute it, pretending it was only in trust for the women, etc. And in 97, against Allibon and others, for cheating by conspiracy one Hilliard, in obtaining divers bonds from him, for the payment of money to themselves and others, as a consideration for procuring a marriage between him and an indigent woman, whom they represented as being rich.

In neither of those cases could an indictment have been sustained for the same injury practiced by an individual without the aid of conspiracy or combination; and, as Tremaine gives the terms, the reigns and the names of the respective parties, there can be little doubt that they are precedents of informations in adjudicated cases,

and that they were held to be good; and they go far to show how the common law was understood in England in the reigns of Charles and James II. And the law of conspiracy, as settled by the uniform tenor of the decisions of the courts in England, has been recognized and adopted as the common law by the courts of several of the States of the United States, as in *The Commonwealth vs. Judd*, 2 Mass. 329, and *The Commonwealth vs. Tibbetts*, 2 Mass. 536.

The foregoing cases show the law in England, both before and after the formation of our Government. In 1812 the Supreme Courts of the United States came to consider whether Circuit Courts of the United States had a common law jurisdiction in criminal cases, and it was held that no such jurisdiction existed (*United States vs. Hudson*, 7 Cranch 32.)

Such, then, may be said to have been the state of the law when Congress began to define public offenses. On the 2nd day of March, 1831, Section 5399 of the R. S. was enacted, as follows:

> "Every person who corruptly, or by threats or force, endeavors to influence, intimidate or impede any witness or officer in any Court of the United States, in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars or by imprisonment not more than three months, or both." (Sec. 5399 U. S. R. S.)

On June 10, 1872, Section 5404 of the Revised Statutes was enacted, defining the obstruction of justice by corrupt means. On April 20, 1871, Sections 5406 and 5407, concerning conspiracies to defeat the enforcement of laws, were enacted. These various statutes appear to be ample to punish all offenders against the administration of justice who could possibly be within the scope of this appeal. The acts of Congress to which we thus refer are all

subsequent to the enactment of Section 725, concerning the power to punish for contempt. Section 725 was enacted on the 24th of September, 1789. If Section 725 were broad enough to cover, if it contemplated the determination of all matters which tended to the obstruction of justice, then Congress did an idle and foolish thing in the enactment of the various subsequent statutes to which I have referred. But did Congress do such an idle and foolish thing? In *ex parte Robinson*, 19 Wall. 505, the Supreme Court construed Section 725 as a limitation upon the powers of the Courts to punish for contempt, and, on page 511, the Court said:

> "The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the powers of these Courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the Courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the Courts in his official transactions; and, third, where there has been disobedience or resistance by any officer, party, juror, witness or other person to any lawful writ, process, order, rule, decree or command of the courts. As thus seen the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments and processes."

In re Chiles, 22 Wall. 157, the Court again construed Section 725, and, at page 168, Mr. Justice Miller said:

> "Section 725 of the Revised Statutes declares that the courts of the United States shall have power to punish by fine and imprisonment for contempts of their authority. And among the cases specially enumerated are 'disobedience or resistance by any officer of the Court, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree or command of the said courts.' Such has always

been the power of the courts, both of common law and equity. The exercise of this power has a twofold aspect, namely: First, the proper punishment of the guilty party for his disrespect to the Court or its order; and, the second, to compel his performance of some act or duty required of him by the Court, which he refuses to perform."

In 1888 the Supreme Court came to consider these relative statutes, and it held that a person might be punished for a contempt of court in doing an act which affected the administration of justice, though the act affecting the administration of justice was an indictable offense. But the Supreme Court, speaking by Mr. Justice Harlan, called attention to the fact that the powers of the Court under the judiciary act of 1789 had been limited by a subsequent act to those cases where the wrongdoing was proximate to the Court, and the subsequent statute was quoted, as follows:

"That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness or any other person or persons, to any lawful writ, process, order, rule, decree or command of the said courts.

"Sec. 2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate or impede any juror, witness or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished, by fine not exceeding five hundred dollars, or by im-

prisonment not exceeding three months, or both, according to the nature and aggravation of the offense."—*In re* Savin, Petitioner, 131 U. S. 267.

On page 275 the Court further says:

"The act of 1789 did not define what were contempts of the authority of the courts of the United States in any cause or hearing before them, nor did it prescribe any special procedure for determining a matter of contempt. Under that statute the question whether particular acts constituted a contempt, as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation. The act of 1831, however, materially modified that of 1789, in that it restricted the power of the courts to inflict summary punishments for contempt to certain specified cases, among which was misbehavior in the presence of the Court, or misbehavior so near thereto as to obstruct the administration of justice. *Ex parte* Robinson, 19 Wall. 505, 511."

In considering "contempt of court" I shall not refer to direct contempt nor to that form of indirect contempt, which is predicated upon an interference with property in the custody of the Court. I shall disregard as irrelevant to the questions now before this Court all those cases which proceed upon the theory of an interference with property *in custodia legis*, because I believe that there is a substantial difference in jurisprudence between the *res* of litigation and the mere *lis*. I believe the difference which distinguishes the two is analogous to the difference between the procedure and the subject matter of litigation. I believe it is akin to the difference that exists between a proceeding *in rem* and a proceeding *in personam*. These differences, which I believe exist, are relative and illustrative. *Arthur vs. Oakes*, 63 Fed. Rep. 310, is a case illustrating the province and powers of a court of equity to protect property and administer

estates confided to the Court. In *Hovey vs. Elliott*, 167 U. S. 409, this Court construed so much of the act of Congress as pertained to the manner in which a penalty could be imposed for the violation of an order of Court. It was held that the statute was a limitation, and the authorities are reviewed, which point the distinction between the powers of Federal Courts, and the powers of other courts, with respect to the matter now under inquiry.

What were the functions of the restraining order entered in this cause; what were its limitations, if any, for out of the solution of these questions the rights of Mr. Bessette are to be determined, if he have any rights?

Were there any limitations upon the Court in the matter of this restraining order, and if so, what were they?

Could the Court in making the order act without a limitation as to the persons to be affected, or as to the purposes to be accomplished by the restraining order?

The order could not lawfully discharge the functions of a public proclamation. The Court could not act without a stimulus to its functions such as the law prescribes is essential to invoke jurisdiction. There must be an issue, or a pleading tendering an issue, upon which the Court acquires power to command the persons who may be challenged by the pleading to speak, and who by that challenge are entitled to be heard. (*Hovey vs. Elliott*, 167 U. S. 409.) In this instance, as in all others where the matter of jurisdiction has been properly considered, the jurisdiction of the Court was confined to the subject matter of the controversy and to the persons between whom that controversy was waged. The essential purpose of the restraining order was to define the lines of conduct which *certain* persons might lawfully pursue until the Court could hear and determine the cause upon its merits. I ascribe only that force to

the word *certain* as a limitation upon the persons to be affected, which the law of the English-speaking people has ascribed. The lower Court itself seems to have found that *the element of defense was essential to jurisdiction*, otherwise the Court might have ordered its proclamation issued without any evidence or any hearing. And it was likewise essential to jurisdiction that particular persons be challenged as defendants, otherwise persons having no interest in the subject matter might be brought as straw men before the Court and an adjudication had which would be a great wrong to persons who were specially interested in the subject of the controversy, but who were not before the Court. The force of this suggestion must be impressive when one considers, as the lower Court considered it in this case, that one not named as a party to the bill nor designated as one of any class who might have been named has no authority or right to challenge the justice or to exemplify the injustice of the restraining order or to disapprove the facts upon which it purports to be fabricated.

The purposes of the restraining order were limited as to time and as to cause. The temporal limitation confined the force of the restraining order to the period between its issue and the date upon which the Court might give a further hearing. The cause involved in the issue was exemplified by the restraining order, and to hold otherwise would mean that because the Court had spoken upon one thing it must be deemed to have spoken upon all things. Now, if we are to analyze the restraining order, we must look to the persons who were sought to be affected by it, to the manner in which they were to be affected, and to the causes as to which they were to be affected. We find that certain persons were named as defendants to the bill for an injunction. That was the first limitation. At this point the Court bowed to that principle of jurispru-

dence which has arisen out of the law of necessity, and allowed the complainant to challenge not only particular persons, but also classes of persons. The first class of persons involved by this rule of necessity in this suit was described as those "confederating" with the named defendants. The second class was described as the "agents and servants" of the named defendants. These two classes are separate and distinct. A confederate is a principal and he acts as a principal. An agent of servant acts not in his own right, but in a character that is purely representative. He acts not for himself nor for his own cause, but for the person and cause of another. (*Iveson vs. Harris*, 7 Ves. 256; *Wellesley vs. Mornington*, 11 Beav. 181; *Hodson vs. Coppard*, 29 Beav. 4; *Sedgwick vs. Redman*, Cary 44; *Wimpy vs. Phinizy*, 68 Ga. 188.)

The statutes which created the lower Court and breathed the life of jurisdiction into its lungs, placed a limitation upon the powers of the Court (*Ex parte Robinson*, 19 Wall. 505), which in this case confined the Court's right to speak only to the W. B. Conkey Company and such others as were citizens and residents of the State of Indiana. The complainant seems to have appreciated the potency of this limitation, because in his bill for injunction he described the defendants as "*residents of the city of Hammond, in the State of Indiana, and citizens of the State of Indiana.*" (Record, page 3, last 3 lines of Art. 1 of the bill.) And again in Article 8 of the bill for injunction (Record, page 7), when the complainant came to his averment of confederacy, he said in his bill, "That said Harry Alting then and there proceeded to carry out and did so far as he has been able to do, carry out and execute his said threats, and in pursuance of such purpose and design, *did then and there conspire and confederate with divers irresponsible persons residing in the city of Hammond* (but whose names are un-

known to your orator and who are not employed in or in any wise connected with or interested in your orator's factory or business) to carry out, and *did then and there, acting in concert with said divers irresponsible persons, carry out,*" etc.

Again, in the same article of the bill, it is said "that said thirty-eight employes have now joined in said conspiracy *with said Harry Alting and his said confederates*, and have conspired and confederated with, and are now conspiring, confederating with and acting in concert with said Harry Alting and his confederates, and with each other," etc.

Again, in Article 9, the bill speaks of said Harry Alting and "said confederates." (Record, page 8.)

Again, in Article 10, the bill mentions "said confederates." (Record, page 9.)

In Article 1 of the petition for attachment the complainant avers that he filed his bill against James A. Russell et al., "named as defendants therein, charging, among other things, that said defendants had conspired, confederated, and were then and there conspiring and confederating with each other, and with divers other persons whose names were then and are now unknown to your petitioner," etc. (Record, page 34.)

Reading together these two descriptions of the classes of persons who were confederating, together with the statute giving jurisdiction because of diverse citizenship, the conclusion is forced that the averment confined the issue to *defendants who were residents and citizens of the city of Hammond, in the State of Indiana.* The concluding sentence of Article 1 of the petition for attachment is as follows: "That your petitioner begs leave to refer to said bill of complaint for greater accuracy as to the matters and things therein set forth, and as to the relief therein prayed."

It was solely upon the ground of diverse citizenship that the Court below acquired jurisdiction. By implication of law as well as by the express averments of the complaint, the right of the Court to pronounce judgment in this instance was so restricted as that it could pronounce judgment only against persons who were citizens and residents of the State of Indiana, except, of course, it found against plaintiff.

The petition for attachment says of Mr. Bessette that he was not named as a defendant in the bill of complaint (Record, page 37, Art. 6, petition for attachment), and it further says of him, upon the information and belief of the petitioner, that he is a resident of the city of Chicago (Record, page 45; petition for attachment, Art. 22).

Recurring again to the violation of the restraining order, we find that it was issued upon the application of a private suitor, in a private action, to redress a private wrong. (*Worden vs. Searls*, 121 U. S. 14.) No question of the public welfare was involved, and the case of Debs and similar cases are not controlling. (*In re Debs*, 158 U. S. 564.)

The restraining order is peculiarly drawn with respect to distribution of prohibited acts among the defendants. Some of the prohibited acts are enjoined upon "the defendants, their confederates and servants," while others of the prohibited acts are expressly enjoined upon the defendants alone. Beginning after the first colon in the first clause of the restraining order (Record, page 30), the names of various defendants are stated, and they and their confederates and servants are enjoined from doing each of the following acts, namely, "from in any manner interfering with, hindering, obstructing or stopping any of the business of said W. B. Conkey Company," etc., "or its agents, servants or employes in the

operation of the factory and business of said W. B. Conkey Company, located," etc. (Record, page 31.)

"Also from entering upon the grounds, factory or premises of said W. B. Conkey Company, etc., for the purpose, etc." (Record, page 31.)

"Also from compelling or inducing or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of the employes of said W. B. Conkey Company to refuse or fail to do their work or discharge their duties as such employes," etc. (Record, page 31.)

"Also from compelling or inducing or attempting to compel or induce by threats, intimidation, force or violence any of the employes of said W. B. Conkey Company to leave the service," etc. (Record, page 31.)

"Also from preventing or attempting to prevent any person or persons by threats, intimidation, force or violence from freely entering into the service and employment or continuing in the service and employment of," etc. (Record, page 31.)

"Also from compelling or inducing or attempting to compel or induce by threats, intimidation, force or violence the said W. B. Conkey Company against its will or the will of its officers employing or discharging any person or persons whomsoever." (Record, page 31.)

"Also from doing any acts whatsoever in furtherance of any conspiracy or combination to restrain or obstruct either said W. B. Conkey Company or any of its officers or employes in the free uninterrupted and unhindered control and direction of the business and affairs of said W. B. Conkey Company." (Record, pages 31-32.)

"And from ordering, directing, aiding, assisting or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid." (Record, page 32.)

The foregoing are *expressly enumerated as the acts which were prohibited with respect to the defendants and other persons.*

Following the enumeration of those acts the restraining order appears to have been drawn upon a different theory. *The element of confederacy is thereafter omitted, and the restrictions are expressly*

confined to the defendants alone, and not to the defendants in conjunction with other persons. Among the acts which the defendants alone are restrained from doing (Record, page 32) are, "congregating or being upon or about the sidewalks, streets, alleys, approaches or places adjoining or adjacent to said factory and the premises of said complainant in the city of Hammond, or upon or about said factory or the grounds belonging to the same or used in connection therewith, for the purpose of intimidating the employes of said W. B. Conkey Company or any of its officers or agents, or preventing them or any of them from rendering their services or discharging their duties to said W. B. Conkey Company."

"Also from inducing or coercing by threats, force or violence any employes of said W. B. Conkey Company to leave the service or employment of said W. B. Conkey Company." (Record, page 32.)

"Also from in any manner interfering with or molesting any person or persons who may be employed by or may be seeking employment with said W. B. Conkey Company in the operation of its said factory and business." (Record, page 32.)

"Also from in any manner interfering with said W. B. Conkey Company in carrying on its business in its usual and ordinary way." (Record, page 32.)

"Also from collecting, either singly or in company with others, in and about the approaches of the factory and buildings of said W. B. Conkey Company for the purpose of patrolling or controlling or guarding the streets, entrance gates and approaches to the property of the said W. B. Conkey Company for the purpose of intimidating, threatening or coercing any of the employes of said W. B. Conkey Company or any person or persons seeking employment with said W. B. Conkey Company." (Record, page 32.)

"Also from interfering with the employes of said W. B. Conkey Company in going to and from their daily work at said factory of the complainant, W. B. Conkey Company." (Record, page 32.)

"Also from going, either singly or collectively, to the homes of the employes of said W. B. Conkey Company, or of any or either of

them, for the purpose of intimidating or coercing any or all of said employes to leave the employment or service of said W. B. Conkey Company, or from entering into the employment or service of said W. B. Conkey Company, and as well from intimidating or threatening in any manner the wives and families of said employes at their said homes or elsewhere." (Record, pages 32-33.)

The character and scope of this restraining order must also be determined in the light of the familiar principle that a Court cannot, under the guise of proceedings for contempt, enlarge and extend the scope of its injunction, nor make it *ex post facto*, but must give to the order a strict construction.

"To make an order now, and then punish for contempt or disregard of it before it was made, is *ex post facto* legislation and judicial enforcement at the same moment." (Mr. Justice Miller, *in re Chiles*, 22 Wall., at page 169. See also *U. S. vs. Atchison Ry. Co.*, 16 Fed. Rep. 853.)

This is only a different statement of the rule that the judgment to be valid must strictly conform to the pleadings. *Miller vs. Schaefer*, 75 Ill. App. 389; *Graham vs. Bates*, 45 S. W. 465; *Ramsey vs. People's R. Co.*, 144 Mo. 175; likewise that a Court is bound by its record, *Borkenhagen vs. Paschen*, 72 Wis. 272. It is not sufficient that the judgment was supported by evidence if outside of the issue tendered. *Riley vs. Jones*, 43 Va. 43; *Price vs. Boden*, 22 So. 657; *Catheral vs. Griere*, 104 Ia. 330; *Foley vs. Foley*, 120 Cal. 33; *Woodgate vs. Fleet*, 44 N. Y. 113; *People vs. Johnson*, 38 N. Y. 63; *Coit vs. Tracy*, 8 Conn. 269; *Tray vs. Hegeman*, 98 N. Y. 358; *Lea vs. Lea*, 99 Mass. 493 (see extended note to this case in 96 Am. Dec. 772); *Reynolds vs. Stockton*, 43 N. J. L. 221, 3 Am. St. Rep. 305; *Seamster vs. Blackstock*, 83 Va. 232; *Anthony vs. Kasey*, 83 Va. 238; *Wade vs. Hancock*, 26 Va. 620; *Ex Parte Lange*, 18 Wall. 163. The protection of the parties require it.

Benze vs. Hines, 3 Kan. 390; *Atchison, etc., R. Co. vs. Jefferson Co.*, 12 Kan. 127; *Bradley vs. Johnson*, 49 Ga. 412; *Howard vs. Kimball*, 63 Me. 308; *Davis vs. Brown*, 94 U. S. 423.

Now consider the nature in law of the petition for attachment. Mr. Bessette is entitled to this because one cannot be arraigned upon one charge and tried upon another. We must look to the pleading upon which the Court acted to ascertain the legal nature of the charge. The cases, *supra*, demonstrate that courts have high regard for the rights of the citizen. Indeed, the whole matter of procedure arises out of the diversity of causes, and to the sense of duty on the parts of the courts, whereby they become competent to administer justice in the particular case. Thus it is said that a Court cannot enlarge its restraining order in a contempt proceeding, nor can a Court bind the rights and interest of a person who is not before the Court, nor can a Court render a judgment that is beyond the issues tendered. In each of the foregoing instances, if the Court assumes to violate the rule, the judgment is unlawful. Public policy requires that this be so, that there may be an end to litigation, and individual rights require it in order that the defense of former jeopardy, *res adjudicata*, estoppel, etc., may be conserved. It has been well said that a matter cannot be regarded as *res adjudicata*, as a general rule, without the concurrence of four conditions, viz.:

(1) Identity of the thing sued for, *i. e.*, the relief; (2) identity of the cause of action; (3) identity of persons and parties to the action; (4) identity of the quality in persons for or against whom the claim is made.

Indirect contempt proceedings may be classified (1) according to the nature of the relief sought, and (2) according to the nature of the charge made in the petition or information. If classified ac-

cording to the nature of the relief sought, we again find that there are two distinct divisions, viz., those wherein a remedial fine is entered for the use and benefit of the party aggrieved (*Worden vs. Searls*, 121 U. S. 14) and those wherein a punitive fine is entered for the use and benefit of the government, at the same time punishing the culprit and vindicating the majesty of the law. In *New Orleans vs. Steamship Company*, 20 Wall. 387, the defendant was fined because he disregarded the Court which stood ready to hear him and went contemptuously into another tribunal. Here Mr. Bessette did not go into another tribunal, and the Court which convicted him would not look to his rights in the premises—"they were wholly immaterial"—but acted upon the unwarranted assumption that the rights of the W. B. Conkey Company were *res adjudicata* and exclusive, and that the only question the Court would determine was: Did Bessette knowingly violate the restraining order?

If contempt proceedings be considered according to the nature of the charge made, *i. e.*, according to the averments in the petition or information, we find again that there are the two distinct classes, viz., those wherein the rights of the complaining party have been outraged (*Worden vs. Searls, supra*) and those wherein the administration of public justice has been obstructed. (*New Orleans vs. Steamship Company, supra.*) An examination of the cases will show uniformly that a remedial fine has been entered when the complaint was made of a transgression upon the rights of the individual in whose behalf the injunction was issued, and that uniformly a punitive fine has been entered when the complaint was also made of an obstruction to the due administration of justice. These distinctions are clearly pointed out in many well-considered cases. Remedial fines for the vindication of private rights were before the Courts in these cases (*Worden vs. Searls*, 121 U. S. 26;

In re Graves, 29 Fed. Rep. 60; *U. S. vs. Berry*, 24 Fed. Rep. 783; *U. S. vs. Ry. Co.*, 16 Fed. Rep. 853; *Van Zant vs. Mining Co.*, 2 McCrary 642; *In re Chiles*, 22 Wall 163; *Durant vs. Supervisions*, Woolw. 377; *New Orleans vs. Steamship Co.*, 20 Wall. 392; *Kirk vs. Milwaukee Manfg. Co.*, 26 Fed. Rep. 508.) The rules by which proceedings against Mr. Bessette may be classified are the following:

(1) According to the parties invoking the jurisdiction in the original bill, *i. e.*, whether private parties, as in *Worden vs. Searls, supra*, or the public, as *In re Debs*, 158 U. S. 564.

(2) According to the subject matter of the averments in the original bill, *i. e.*, whether a public duty had been invaded or disregarded, as *In re Lennen*, 166 U. S. 548, or a private right involved, as in *Worden vs. Searls, supra; Eureka Lake Co. vs. Yuba County*, 116 U. S. 410.

(3) According to the specified transgressions, as they are charged against the particular persons, and in the very peculiar manner in the original bill, *i. e.*, whether as against certain defendants particularly named or defendants, with their confederates, agents, servants, etc.

(4) According to the relief demanded in the original bill (*In re Chiles*, 22 Wall. 163; *Stimpson vs. Putnam*, 41 Vt. 238).

(5) According to the terms of the restraining order (*Vide* cases, *supra*).

(6) According to the parties invoking the jurisdiction in the petition for attachment (*Vide* cases, *supra*).

(7) According to the subject matter of the averments in the petition for attachment (*Vide* cases, *supra*).

(8) According to the specific transgressions charged in the petition for attachment (*Vide* cases, *supra*).

(9). According to the procedure in the petition for attachment (*Vide* cases, *supra*).

In Savin, Petitioner, 131 U. S. 273, the Court reviewed the various acts of Congress relating to the obstruction of the due administration of justice and applied the limitation of the statute, *i. e.*, the transgression must be committed near to the court before the offense can be punishable as contempt. The same rule is followed in Cuddy, Petitioner, 131 U. S. 280. In *Eilenbecker vs. Plymouth County*, 134 U. S. 32, the Court makes it plain that the function of contempt proceedings is to require compliance with or performance of the orders of the Court, rather than to enforce strangers to desist from entering upon the scene, regardless of what their individual rights in the premises may be.

Thus, from every point of view, does it appear that the proceedings against Bessette were civil and private; that the intent was to allow a remedy to the W. B. Conkey Company rather than to redress a public wrong. Indeed, at the trial the Court heard evidence as to the extent of the injury sustained by the W. B. Conkey Company. An exception was taken by Bessette to this action of the Court (Record, pages 279-282), and it is the basis of an assignment of error in the Court of Appeals. (Record, page 121; 20th item in asignment of errors.)

If there could remain any doubt as to the fact that these contempt proceedings were intended to be remedial that doubt would be removed by the provisions of the final decree which the W. B. Conkey Company, in the Circuit Court of Appeals, caused to be brought into the record—contrary to the order of the Court of Appeals, however—in which decree it affirmatively appears that the contempt proceedings against all those who were accused with Bessette, and on whom service was had, were dismissed by the W. B.

Conkey Company on the terms that those transgressors had granted to the W. B. Conkey Company that price which the W. B. Conkey Company demanded from the transgressors. Not the slightest consideration appears to have been given to the outraged dignity of the Court or to the transgressions against the administration of justice (Additional transcript of Record, page 5).

In consideration of the premises it would seem that Bessette's remedy was by appeal, or not at all. Counsel appreciates the force of well considered cases to the effect that orders such as fineing for the violation of an injunction are merely interlocutory and no appeal will lie therefrom. But that rule can not apply here without a denial to Bessette of his day in Court, because Bessette was not a party to the bill and *no final decree ever was or ever can be entered against him*. To have made Bessette defendant to the bill and to the decree would have defeated the jurisdiction of the Circuit Court because the W. B. Conkey Company and Bessette were both citizens and residents of the State of Illinois, and the jurisdiction of the Circuit Court was based solely on diverse citizenship. But, further, the W. B. Conkey Company should be held to be estopped to raise the objection that the final decree was not brought up by Bessette in his appeal. The record shows that the judgment against Bessette was entered on October 19, 1901 (Record, page 597). Bessette was a poor man and was sent to jail, where he was confined for some time. Not being a party to the record he had no voice, no standing even, to urge the entering of a final decree. If the rule were that one circumstanced as Bessette was must lie in jail —in the absence of a payment of his fine—until the complainant elected to take a final decree, it would place it in the power of such complainants to defeat all remedy by an appellate review to those whose conviction had been obtained. Still further, it appears that

the W. B. Conkey Company has caused the final decree to be incorporated in the record—irregularly, it is true—so that there is no such insufficiency of data as would cause the Court to hesitate lest it act improvidently for want of knowledge of the facts. On the plainest principles of justice Bessette ought to be allowed to appeal from so much of the record as was final as to him. Many respectable Courts have entertained this view of the law. (*Lester vs. People*, 150 Ill. 408.)

It is obvious, of course, that if this proceeding were civil and remedial as against Bessette, the want of diversity of citizenship would defeat the jurisdiction of the Circuit Court and make the judgment void.

It is also obvious that the Circuit Court was unauthorized when apprised of its want of civil jurisdiction to switch the case after the conclusion of the trial and enter a punitive fine as upon the commission of a public offense. This action of the trial Court in changing at the last moment the theory of the proceeding is palpably disclosed by the record, and the error of that action is sought to be corrected in the assignment of errors, made for the consideration of the Circuit Court of Appeals.

SPECIFICATION OF THE TRIAL COURT'S ERRORS.

I shall not, without the express permission of this Court, assume to argue the errors assigned in the Circuit Court of Appeals upon the trial Court's record, but inasmuch as that record may illuminate some of the matters upon which this Court may elect to pass in deciding the questions certified to it, I deem it my duty to give a specification of the trial Court's errors, with a summary of the record pertaining thereto.

The First Specification of Error.

It may better serve the convenience of the Court to assemble those assignments, which present different aspects of a single question, and such a plan will be pursued. In the assignment of errors (Record, pages 119-122) twenty-five rulings of the Court are challenged. There were many exceptions taken by the appellant throughout the proceedings, but those which are not assigned will be used only to illustrate the fatality of those which are assigned. The assignment will be taken up as nearly as possible in its order and as follows:

> 1. The Court erred in overruling the plea of the said Edward E. Bessette to the jurisdiction of said Circuit Court over the person of said Bessette in the matter of said petition.

The plea to the jurisdiction was presented under a special appearance (Record, pages 87-88; *ante* pages 26-27.) The case was presented and tried upon the theory that Mr. Bessette was in contempt for violating the restraining order. The Court in the trial made numerous rulings, illustrative of the theory of the case. Some of the Court's observations are quoted, as follows:

"The complaint is made against a party for a violation of an injunction. The petition or information, or whatever you please to call it, is before the Court because it is a pleading, and the truth or falsity of the matters contained in it is the very matter to be tried. It is not evidence itself any more than any other pleading * * * Now, the Court knows, from its knowledge of the history of these matters, that Mr. Bessette was not a party to the original bill; that he was not named in the writ of injunction, and was not served by the marshal in the writ of injunction.

Now, the basis, the only basis of making Mr. Bessette answerable, is on the ground that he, after having received knowledge of the restraining order, made himself a party thereafter in violating the restraining order in connection with those who were enjoined by it, and it is for the purpose of allowing a basis for the introduction of that sort of proof that I allowed the original writ and return to be read in evidence." (Record, page 150.)

The Second Specification of Error.

The second, third, fourth, fifth and sixth errors assigned present anew the question of the theory and nature of this proceeding; they may be summarized as follows: (a) The pleadings do not charge a crime (b) the proof does not establish a crime; (c) the matters pleaded and proved do not constitute an offense against the administration of justice punishable by fine for the use and benefit of the United States; (d) the crime, if any was committed, was committed in Illinois; (e) the Court for the District of Indiana had no jurisdiction to enter a rule against Edward E. Bessette to show cause why he should not be punished for contempt of Court in violating the restraining order.

The Third Specification of Error.

The seventh error assigned (Record, page 120) is taken as the third specification of the errors relied upon. It is as follows:

> 7. That the Circuit Court of the United States for the District of Indiana erred in not discharging the said Edward E. Bessette upon the incoming and filing of his verified answer to the rule to show cause.

In ruling upon the admission of this verified answer in evidence the Court said: "If it is verified by the defendant it may be used both as an affidavit and an answer." (Record, page 282.) The following is part of a colloquy which occurred at the trial (Record, pages 308, *et seq.*) upon the appellee's motion to strike out from the evidence so much of Mr. Bessette's answer as pertained to the theft of a union label by D. R. Huntington, the complainant's witness, viz.:

> The Court: I have heard the answer read; so far as the answer is material and responsive to the case made here, it will be considered as to the testimony of the defendant, the same as though he had been put on the witness stand, but I am not going to try the Union. It don't matter if the Typographical Union gave him the power of attorney, authorizing him to do the acts that he is charged with doing. That is no excuse. He is here for the purpose of answering just what he has done; nothing more, nothing less; it will be regarded by this Court as of no earthly consequence whether he was authorized or not by the Union to do that very thing.
>
> Mr. Newberger: That was my idea, that his authority or the lack of it would cut no figure.
>
> The Court: The Court is clearly of the opinion that there is no power in this country, from the President of the United States down, that has any authority or power to clothe any man with a shred of right to violate a lawful injunction issued by this Court. Subject to review by other tribunals, the judgment of this Court is supreme in that regard. Neither the executive nor legislative power can interfere with a judicial proceeding.

Mr. Rooker: Your Honor, this matter was put in here, because in our theory of this case, according to our theory of it, we had a right to show that we appeared there in an independent relationship and for a lawful purpose. That we had a right to appear upon the scene and did appear upon the scene in an independent relationship, separate and distinct from any alliance with any of the parties who were charged in this bill.

The Court: Mr. Bessette, the same as any other citizen of the United States or of Canada or any other country in the world, has a right to go there and has a right to be present when the strike was going on, and has the right to do anything in the world that did not violate the injunction, and no authority emanating from any tribunal or any body of people, at home or abroad, could give him any further right. He possessed precisely the same right to go there as a citizen of the United States that he would have if he was sent there by any organized body. The Court does not recognize, does not understand the law to be that any union, Typographical or otherwise, can communicate a single shred of authority to anybody else to go and mix up in a strike beyond the right and authority he has as a free man and a citizen of the United States. He possesses in his own person every right and every prerogative to be there that could be conferred upon him by even the President of the United States. I said this morning that the Labor Commissioners of the State of Indiana have no authority which gives them power to go down there or any place within the State and to violate any lawful injunction that this Court issues. In other words, the power of this Court is independent of any legislation of the State. The power of this Court to enforce its judgments and decrees is independent

of the executive and legislative powers. This Court has an equal and co-ordinate power under the Constitution of the United States with the President and with Congress, and so long as the Court keeps within its constitutional power there is no tribunal that can stay its hands or can revise its acts, except the judicial power of the Nation to be exercised on appeal. I don't see that it is a matter of any earthly concern whether Mr. Bessette went down there as the representative of the Typographical Union. If they had an interest they had a right to send a man down there. If they did not have any interest and some individual had an interest he had a right to go down there. He had the right to persuade and advise and to do anything that was lawful and not in violation of the injunction of the Court, and no human power could give him any right beyond that. The judgments of the courts would be idle, would be a farce, if any body of men could get together and invest any person with authority to disregard them.

Mr. Rooker: It is not under that theory, if your Honor please.

The Court: What theory is it then?

Mr. Rooker: Well, it is on the theory, as I stated, that the man wasn't there simply as an idler; he went there for a legitimate purpose, so long as he stayed within the law and we undertake to advise the Court what that legitimate purpose was.

The Court: Yet, Mr. Rooker, and it is on that theory that I try the case, if he just simply wanted to go down there as an idler and sit on the street corners and smoke cigars, he had as perfect a right to go down there and sit around and talk

and do anything that was not in violation of the restraining order, as though he had been sent there by the highest authority.

Mr. Rooker: We put this in there, because the adjudicated cases seemed to warrant it.

The Court: I am going to allow it to stand, with the exception of the matter with respect to Mr. Huntington, which was objected to by the petitioner. His acts are not on trial here. I have stricken that out and given you an exception. So far as the other is concerned it may stay in, but I have said that I think Mr. Bessette has as perfect a right to go down there and do anything within the law and that was not in violation of the injunction issued by this Court as though he had fifty commissions from as many different labor unions. He had as perfect a right as a citizen of the United States to do that as anyone else. Whether he went there to loaf or whether he went there to work—what his motive may have been is of no consequence if he was there within his own right. Any stranger could go there for that matter. We are not trying that question. We are trying the question whether or not being there he did anything that was unlawful or a violation of the injunction. That's all.

The Fourth Specification of Error.

The eighth, ninth, tenth, eleventh, twelfth and twentieth errors assigned (Record, pages 120-121) may be grouped, for consideration, together, inasmuch as each presents the question of the power and right of the Court to proceed against Mr. Bessette for the violation of a restraining order to which he was neither a party *eo*

nomine nor as one of a class. Of these numbers, the eighth was based on the action of the Court in admitting in evidence the original bill for an injunction; the ninth in admitting the restraining order; the tenth the marshal's return to the restraining order; the eleventh and twelfth the affidavit, and also certain parts thereof, of Henry P. Bogle, and the twentieth so much of the affidavit of Alfred E. Wilcox as tended to state alleged damages sustained by the W. B. Conkey Company, from August 24 to October 2, "by reason of the means employed by the defendants, their confederates, aides and abettors in doing things in direct violation of the restraining order of this Court, entered in the cause above entitled," etc. (Record, pages 281-282.) The proceedings as to the affidavit of Wilcox begin on page 279 of the Record and include the following:

Mr. Newberger: We now offer to read in evidence the affidavit of Alfred Wilcox.

Mr. Rooker: To that affidavit, if the Court please, we make the objection that the restraining order as to Mr. Bessette is void for the want of jurisdiction of the person, and the further objection that the restraining order being void as to him, he cannot be called upon to respond in this case to damages such as stated in this affidavit; and we make the further objection that in this case Mr. Bessette is cited to answer as to violations of the restraining order and as to that alone. We submit, upon these objections, the entire affidavit should go out.

The Court: Of course, the description of who he is, what his business has been, in connection with the Conkey business, is competent enough. There is only one material fact testified to; he gives a basis upon which he is able to testify to the ex-

tent of the injury. The only question is whether or not, from the time the writ was issued down to the second day of October, one hundred dollars per day was the damage and that that would include the loss of business and other injury to their factory. Now, the question is this: Where an injunction is issued to restrain people from interfering with a man's business and property and a party is charged with contempt for violating that order, is it competent or incompetent to introduce evidence in order to enable the Court to fix the measure of punishment, to show how serious the effects of the injury were? That is all that is competent for. To that extent the Court will admit it and you may have an exception. It is admitted, however, for that purpose, and for that alone, as tending to show the extent of the injury that was suffered by the violation of this restraining order. Of course, in a suit under a proper bill, they could go before a master and show the extent of injury, if they desired to do it; if that bill was framed so as to pray relief for damages, and they made it out, they would be entitled to a permanent injunction and a decree against the parties who were made parties to the bill in the nature of a judgment against them. In this case, however, it is only material in the one aspect of throwing light on the duty the Court would have to perform if it finds the defendant guilty, and that is in measuring what ought to be the punishment inflicted. It seems to me that the Court has a right to know, whenever a case is brought before it, the extent of the damage, because if the injury to the party arising from the violation of the injunction is trivial it would not be so serious a matter as a case where the violation of the injunction produced great and serious damage. I will allow the affidavit to

remain simply for the sole purpose of tending to show the extent of the injury from the time Mr. Bessette came down there to the time that the information was filed. That would be the limit.

Mr. Rooker: Would your Honor give us an exception to the part that you admitted on that theory?

The Court: Certainly.

The objections to the introduction of the original bill are stated on pages 129-130, as follows:

Mr. Newberger: I will first offer in evidence the original bill of complaint upon which the restraining order was granted.

Mr. Rooker: As to that, if the Court please, the defendant, Edward E. Bessette, objects for the reason that the bill for injunction is irrelevant and immaterial, for it does not declare that Edward E. Bessette, this defendant, is a citizen and resident of the State of Indiana, or that he was a citizen and resident of the State of Indiana at the time of the filing of the bill; nor does it make any averment showing, as to said Besette, that the cause is within the jurisdiction of this Court; and for the further reason that Bessette is cited to appear in this cause and answer to an alleged violation of the restraining order made in this cause.

The Court: The objection may be overruled, and the defendant Bessette have an exception.

The proceedings as to the introduction of the restraining order appear on pages 144-145, and were:

Mr. Newberger: Now we will offer in evidence the original temporary restraining order granted by the Court in this

case, which, I believe, you admit was granted on August 24, 1901.

Mr. Rooker: Well, really, I don't know, but if you say that is the date, I will not controvert it.

The Court: Have you the original writ returned into court?

Mr. Newberger: I presume the clerk has it. I did not regard it as open to any question.

The Court: I suppose the same objections you want interposed to the admission of the restraining order that was issued?

Mr. Rooker: And adding to the objection made to the bill that for want of jurisdiction over the defendant in this cause the restraining order as to him is void, it appearing on the record that at the time of the filing of the bill the relief sought was against citizens and residents of the State of Indiana.

The Court: The objection may be overruled and the defendant have an exception.

The objections to the marshal's return reiterated those as to the bill. (Record, page 148.)

The Fifth Specification of Error.

The thirteenth assignment of error is a follows:

13. The Court erred at the trial of said cause of this defendant in admitting in evidence, over the objection of said Edward E. Bessette, evidence to prove the acts of other persons without sufficient proof of the identification of said Bessette with the said acts of said other persons.

We shall use this assignment and the twelfth together, as the fifth specification. The errors complained of, the appellant contends, run throughout the record. The first exception to which this Court's attention will be called is assigned as the twelfth error, *supra*, and was taken upon the offer to introduce the affidavit of Henry P. Bogle. (Record, pages 150-161.) One of the questions of law presented by this exception is addressed *to the right of the Court to convict Mr. Bessette of conspiracy under the issues here tendered.* The following appears in the record, beginning on page 150:

> Mr. Newberger: I will now offer to read in evidence the affidavit of Henry P. Bogle.
>
> Mr. Rooker: Now, if your Honor, please, there are a number of these affidavits. Of course, I haven't the least information concerning what is contained in them. I do not want to "sin away my day of grace," and let matter go in as to which if I was informed I would object, and I do not know how I would get my objection accurately without having the opportunity to know what is contained in the affidavit.
>
> The Court: It may be passed to counsel and counsel may look at it. There is one thing, however, that is entirely within the control of the Court, and that is the matter of marshaling the order of proof; that is a matter entirely within the discretion of the Court. Now, the Court knows from its knowledge of history of these matters, that Mr. Bessette was not a party to the original bill; that he was not named in the writ of injunction, and was not served by the marshal in the writ of injunction. Now the basis, the only basis of making Mr. Bessette answerable is on the ground that he, after having received knowledge of the restraining order, made himself a

party thereafter in violating the restraining order in connection with those who were by it enjoined, and it is for the purpose of allowing a basis for the introduction of that sort of proof that I allowed the original writ and return to be read in evidence. Now, the logical order of making proof would be to show that this defendant was advised of the tenor of the restraining order; that he knew of it; and then next show that he violated it in connection with parties who were restrained in some one of the particulars set forth in the information. That is the natural order. Of course, the Court would permit, on the assurance of counsel that they would make that proof, the proof of what he did to go in first. It won't do any harm, as it is a matter on trial before the Court, which way it is done, but if it was a trial before a jury I should insist upon having the logical and legal order of introduction of evidence observed, and if it is just as convenient it will be observed here.

Mr. Newberger: It may be inconvenient, and I think the evidence that we will present to the Court will cover the question fully. There is hardly a denial by Mr. Bessette in his sworn answer of knowledge of this restraining order.

* * *

The Court: Well, counsel say that it will be inconvenient for them to pursue the logical order of proof, and as the hearing is before the Court there is no danger of the Court being misled as a jury might be, and we will not observe the logical order of proof. Of course, the cause fails unless that vital point is proven. It is not necessary that he should have read and analyzed at all the paper. Of course, if a man is advised

generally that there is an injunction that generally prohibits the doing of certain things, and with notice and knowledge he shuts his eyes and goes ahead, he is chargeable with all that he might have learned and ought to have learned, and would not be excused.

Mr. Rooker: Now, as to that statement, if the Court please, for the purpose of saving the law question, I desire to take an exception to so much of the statement as pertains to the admissibility of evidence upon the theory that Edward E. Bessette is charged in this case with a contemptuous obstruction of the administration of justice and a contemptuous obstruction of the processes of the Court, and also to make our objection at this time to the statement of the Court that the Court will exercise its discretion to allow proof of the acts of Bessette prior to a showing that he had lawful information as to the restraining order.

And we will also object to the statement of the Court to the effect that it will exercise its discretion so as to allow proof of any specific fact prior to the proof of the averment of confederacy or conspiracy unless the act offered to be proven is one committed by or in the presence of Bessette.

The Court: Well, the Court has not indicated that it would allow any statement of any other person to be used in evidence against Mr. Bessette unless in his presence, until there was some evidence offered of a conspiracy and confederacy to do some act in violation of the restraining order. The Court, therefore, overrules your motion and desires to say that the Court regards it as a matter within its discretion to determine the introduction of the evidence in such order as to the Court may seem conducive to a speedy hearing of the cause,

but I desire to repeat again that the Court does not mean to be understood as intimating that the acts and declarations of other parties who are restrained would be admissible in evidence against Mr. Bessette until some proof satisfactory to the Court is made showing *prima facie* that he was acting in combination with others who are restrained in this cause.

Mr. Rooker: If the Court please, with respect to the affidavit of Henry P. Bogle, the defendant, Edward E. Bessette, objects, for the reasons stated in our objection to the introduction in evidence of the petition for attachment and the order based thereon. I take it that your Honor would overrule that generally.

The Court: It may be overruled.

Mr. Rooker: And note our exception. The defendant, Edward E. Bessette, objects to each of the following specific parts of this affidavit:

First: So much thereof as reads as follows:

"On or about August 16th, 1901, Harry Alting, one of the pressmen in the employ of said W. B. Conkey Company, was discharged for incompetency in his work."

We objeect to that for the reason that it states a conclusion and for the reason that it does not show any knowledge on the part of this affiant, Henry P. Bogle, upon which such conclusion is predicated, and for the further reason that it is incompetent, irrelevant and immaterial in this cause, because not being called now for trial upon the merits or demerits of this alleged cause of action.

We make, also, the same objection to the following averment in the affidavit of Henry P. Bogle: "On or about Monday, the 19th of August, 1901, about thirty-nine feeders and

pressmen left the employ of said W. B. Conkey Company. Immediately afterwards, the presses were shut down. During the week beginning August 20th and ending August 25th, 1901, and during the week following, over one hundred persons went out on strike in addition to the thirty-nine above mentioned; men, women and girls joined the strikers. On August 20th, 21st, 22nd, 23rd and 24th, 1901, a number of new men were employed through the Chicago office of the company, to fill the places of the strikers."

Now, we object to that for the same reasons as stated in our previous objection to a specific part of this affidavit, and for the further reason that the facts alleged to be recited here are on their face prior to the issuance of the restraining order; and we object specifically to the clause and sentence "On October 20th, 21st, 22nd, 23rd and 24th, 1901, a number of new men were employed, through the Chicago office, to fill the places of the strikers." We object to this for the reasons previously stated, and for the further reason that it states a conclusion and does not attempt to state any fact within the knowledge of his affiant.

We object also for the reasons stated in our first objection to a specific part of this affidavit, to the following: "I met the trains coming from Chicago at different times for the purpose of escorting these new men to the Conkey plant. In almost each instance, as these new men alighted from the trains, they were surrounded by a large number of strikers, aggregating in number from fifteen up to fifty. The strikers would immediately take hold of the new men and by means of threats, intimidations, the use of vile, indecent language, and, in some cases, actual violence, the strikers succeeded in forcing the

new men not to come with me to the plant of the W. B. Conkey Company. In a number of cases the strikers would drag the new men away with them. I did not succeed in bringing to the plant to exceed 10 per cent. of the number of men who came to Hammond for the purpose of entering the employ of the W. B. Conkey Company."

We add to our objection to this clause the further objection that *this matter appears to be reciting wrongs committed by persons not in the presence or under the authorization or instance, either directly or indirectly, of Edward E. Bessette, and for the further reason that it recites a conclusion without stating information upon which the conclusion is predicated.*

We make the same objection stated in our first objection to a specific part of this affidavit to the following, set forth in this affidavit: "Upon August 24th, the injunction was issued in the above entitled cause. During the hours of 6 o'clock in the evening of August 24th, 1901, and 1 o'clock the next morning, there were about 500 copies of the writ of injunction posted in conspicuous and prominent places in and throughout the city of Hammond and in and about the plant of the W. B. Conkey Company."

And, also, we object to this clause: "On August 25th and 26th, 1901, the principal features of the writ appeared in the following newspapers, published in the city of Chicago: 'Chicago Tribune, 'Chicago Daily News,' 'Chicago Inter Ocean,' 'Chicago Record-Herald,' 'Chicago Evening News,' 'Chicago Evening Journal,' 'Chicago American' and 'Chicago Evening Post,' all of which papers have a large circulation in the city of Hammond. On August 26th, 1901, it appeared in the newspapers published at Hammond, Ind., namely, 'Hammond Tribune' and the 'Hammond Daily News.'"

And we add to this objection the further objection that it is improper for the witness to assume to state, and to state, what the principal features of the writ of injunction were, and for the further reason that the writ of injunction was void as to Edward E. Bessette, for the reasons stated in our objection to the introduction in evidence of the restraining order, and we add, also, the further objection that in this cause Edward E. Bessette is cited, not to answer as to a contemptuous obstruction of the administration of justice, but he is cited to appear to show cause why he should not be punished for violating a restraining order heretofore issued by this Court in this cause.

We also make the last named objection to the following parts of this affidavit: "During the week beginning August 25th, 1901, and ending August 31st, 1901, I went to the various railroad stations at Hammond for the purpose of meeting men who had been employed through the Chicago office, and notwithstanding the writ of injunction had been issued, served and liberally published through Hammond, the men whom I met were accosted by the strikers and were persuaded not to enter in the employ of the W. B. Conkey Company."

We add to that objection the further objection that the element of persuasion is not prohibited by the restraining order made by the Court in this cause.

We also make the same objection to the following: "Ever since the writ of injunction was issued there have been, from time to time, gatherings of strikers and sympathizers on the corner right in front of the plant of the W. B. Conkey Company, these men parading up and down Conkey avenue between the Monon tracks and the building of said W. B. Conkey Company and passing over the land owned by the W. B. Conkey Company."

We add to this the further specific objection that *these acts complained of do not appear to have been committed at the instance or upon the procurement of Edward E. Bessette, nor at the instance or upon the procurement of any person confederated with him, and that it appears upon the face of this averment that the acts complained of were committed by a class of persons to whom the defendant, Edward E. Bessette, does not, and did not at the time, belong.*

We make the same objection that was made to the last preceding item of this affidavit to this clause in this affidavit: "These strikers used epithets, threats and attempted in various ways to intimidate the employes of the W. B. Conkey Company."

We add to that the further specific objection that the affiant states a conclusion as to what were epithets and threats, without stating what the epithets and threats were, and that it is indefinite and uncertain and states conclusions in so far as it recites that they attempted in various ways, not mentioned, to intimidate the employes of the W. B. Conkey Company.

We make, also, the objection that was made to the first item of this affidavit to the following: "There has been daily, ever since the writ of injunction was issued, and there now is, a well organized corps of pickets parading up and down the streets, highways and paths leading to and from the plant of the W. B. Conkey Company."

We add to that the further specific objection that it states a conclusion and that the defendant in this case is entitled to know the nature of the organization of the corps of pickets and the objects and purposes of the pickets, with a view of determining whether or not their alleged acts were acts which

would constitute a violation of the restraining order made in this case.

We make the same objection made in the first item of this affidavit to the following: "Almost daily since the strike I have received reports from some of the employes that attacks had been made upon them, and that in some cases bodily injury inflicted by some of the strikers or by some one acting in concert with them."

We add to that the further objection that this matter assumes to state matter that is hearsay as to his receiving reports. This defendant, Bessette, is entitled to know the nature of the communication and to know the authority and right of the person making these communications, to the end that this Court may determine whether this defendant, Bessette, is to any extent whatsoever responsible for those reports and communications, and in order that this Court may determine whether those reports and communications were of a character in derogation of the restraining order made in this case.

We make to the following the same objections that were made to the last preceding clause in this affidavit, the matter now objected to being as follows: "In a number of cases, young girls who were employed in the bindery of said plant, whose ages average from fourteen to twenty years, are detained on their way to and from said plant, and the men who do this invariably insult them, and, in a large number of cases, the strikers have threatened to slap the girls' faces and otherwise injure them if they refuse to join the strikers, and in some instances girls who are willing and anxious to remain in the employ of the W. B. Conkey Company have been compelled to leave for fear these threats would be carried out."

We add that this states a conclusion without stating the facts upon which certain persons are reputed to have quit the service of the W. B. Conkey Company. *We say that this matter is hearsay;* that this witness has no right to state a conclusion either as to the effect upon the minds of the employes of the alleged treatment that they received; nor has he a right as a conclusion to characterize that treatment; *nor has he a right to bind this defendant by a statement not made in his presence or by his authorization as to why the particular employes abandoned the service of the W. B. Conkey Company.*

We make the same objections which were made to the last preceding clause of this affidavit to the following: "The pickets above referred to stand around in groups of from four to twenty in number, all around the factory, and are constantly taunting the employes, and, when not making threats, attempt to terrify them by their appearance and their general bearing, and a number of the employes of the Conkey Company are in constant fear of their lives and it is with great difficulty that they are persuaded to stay in the factory. A large number of the employes of the W. B. Conkey Company are compelled to go with policemen to protect them from bodily injury."

We also make the same objection made to the last preceding clause in this affidavit to the following sentences in this affidavit: "I have at different times gone to the factory at night in order to have the police meet some of the employes in the mornings at their home and boarding houses to bring them out to work. Among the persons I have thus protected are the following: J. B. Horton, E. Minger, Abraham Greenbaum, P. Humphreys and D. G. Sheehan."

We add to this objection to this specific item the further objection that the objects and purposes of this affiant in going to the factory of the W. B. Conkey Company at night is entirely irrelevant and immaterial to any issue that the Court is called upon to determine in this cause.

We make to the following clause in this affidavit the same objections that were made to the first clause in this affidavit, the present clause being, namely: "I have repeatedly heard it stated that the strikers have employed thugs from Chicago to assault the employes of the W. B. Conkey Company and that these thugs are now in and about said city of Hammond."

We add to that objection the further objection that it is hearsay; that it does not assume to have been spoken either in the presence or by the procurement either directly or indirectly of Edward E. Bessette or by any person confederating with him; that on its face it may be a statement made by the W. B. Conkey Company for no other purpose than to qualify this affiant to reproduce this statement before this Court at this time.

We make the same objections which were made to the first clause of this affidavit to the following: "In one instance, one J. W. Henning assaulted one of the employes of the W. B. Conkey Company by the name of E. Minger, on Friday, August 30, 1901, and administered severe injury on said Minger by hitting him about the eye, nose and head. The next day Henning assaulted one Horton and struck Horton in and about the head."

We add to that objection the following specific objection, that this matter does not appear to have been done either directly or indirectly by the defendant, Edward E. Bessette.

We make to the following clause in this affidavit the same objection that we made to the last preceding clause, namely: "Said Henning claims and pretends that he lives in Chicago, Illinois, and is a stone cutter by trade, and that he is acting in the interest of the Conkey strikers. Said Henning was arrested, and, immediately after his arrest, one Harry Morrison, one of the strikers who is prominent in the matter of picketing and other maneuvers of the strikers, made repeated efforts to secure bail for said Henning and protect his interest while he was under arrest."

We add to this objection the following specific objection, namely: that the claims of Henning set out in the affidavit are hearsay and not binding upon this defendant; as to so much of the clause as pertains to reciting the efforts of strikers to procure bail for Henning the matter is not shown to either be unlawful in itself—the matter of procuring bail for a prisoner —nor is it shown to have been done, either directly or indirectly, at the instance or procurement of the defendant, Edward E. Bessette.

We make the same objection which we made to the first clause of this affidavit to the following clause in this affidavit:

"Among those who have been most prominent in accosting the men in going to and from the Conkey plant, and doing picket work, and in meeting the men at railroad stations, and making threats, are John Dunlavey, William Rutz, John Ackerman, Gus Collins, E. W. Tatum and Harry Alting."

We add to that general objection the specific objection that it is not averred or shown, nor is any fact stated upon which the Court can infer that the acts of Dunlavey, Rutz, Ackerman, Collins, Tatum and Alting were, either directly or indi-

rectly procured to be done by the defendant, Edward E. Bessette or with his knowledge or consent; and for the further reason that it is not per se unlawful to go to the railroad station and meet persons. We do not confine this latter clause of the objection to the allegation that on these visits they made threats, but as to the allegation they made threats, we object, it is the statement of a conclusion.

I ask your Honor's pardon for having consumed so much time. I might have abbreviated these objections if I had had the affidavits previously.

The Court: The objections of the defendant may be overruled and the defendant have an exception.

The affidavit of Bogle, to whom these objections were addressed, was then read in evidence. (Record, pages 158-161.)

The Sixth Specification of Error.

The fourteenth error assigned will constitute the sixth specification of error. The assignment is as follows:

> 14. The said Circuit Court erred at the said trial of the cause of this defendant in admitting in evidence over the objection of said Edward E. Bessette the affidavit of Michael J. Kennedy.

Some of the errors complained of in previous specifications reappear in the objections to the affidavit of Michael J. Kennedy. This assignment is not intended specifically to present those errors anew, but they are not waived. Aside from those errors, these rulings show that the Court enlarged the restraining order upon the trial so as to (1) include acts of persuasion; (2) peaceable picketing at the railroad station, some two miles distant, and (3) acts

which occurred prior to the issuance of the restraining order, and which could be contested only upon a trial of the original suit or upon a motion to dissolve made by a party to the suit. The record, beginning on page 161, discloses the following:

> Mr. Newberger: Next we offer to read in evidence the affidavit of Michael J. Kennedy.
>
> Mr. Rooker: If the Court please, the defendant, Edward E. Bessette, makes each of the following objections to each of the following specific parts of the affidavit of Michael J. Kennedy, now offered in evidence by the complainant:
>
> The first objection is to the following clause: "At the time the strike occurred at the plant of the W. B. Conkey Company, August 19, 1901, I was ordered to patrol the sidewalks and entrances to said plant, and ever since said last mentioned date have been attending to such duties. My hours are from 6 o'clock in the morning until 6:20 in the evening. During the early part of said strike a large number of exemployes of said W. B. Conkey Company, hereinafter referred to as strikers, would surround people as they reached said plant, and, by means of threats, tried to induce, and in a number of instances succeeded in inducing, them not to enter said plant. It became necessary in almost each instance for me to go to the street car and take the persons wishing to enter the factory of said W. B. Conkey Company in charge in order to protect them from assault and violence."
>
> *We add to that objection that the facts recited appear to be facts preceding, and not following, the issuance of the writ of injunction, and, therefore, are irrelevant and immaterial, the defendant Bessette in this case being called to answer, not as*

to the merits of the original controversy, but as to the violation of the restraining order of the Court made in this case.

We make the further objection to the following clause in the affidavit of Michael J. Kennedy: "On the 25th day of August, 1901, the writ of injunction issued by the Honorable John H. Baker was served on all strikers and all persons at and near said plant; in addition to the service, a copy of said writ was posted in a number of conspicuous places in and about said plant, and was distributed among the strikers of said W. B. Conkey Company."

We object to that as irrelevant and immatrial, for the reasons stated in our objection to the introduction in evidence of the restraining order, and for the further reason that it is not shown that Bessette was a member of any of the classes of persons who are charged with having been served with the restraining order, or with having information as to the restraining order, and for the further reason that in this case Bessette is not cited to answer as to a contemptuous resistance or obstruction of the process of the Court in the administration of justice, but that he is charged simply with violating the restraining order made in this cause.

We make also objection to the following clause in the affidavit of Michael J. Kennedy: "Among said persons who have been doing picket work are the following: F. Robinson, John Dunlavey, Louis Wildermuth, Robert Whitehead, Thos. O'Neil, Ed. Wells, Gus Collins, Louis Whitton, William Rutz, E. A. Wright, J. W. Sugrue, Charles Johnson, C. Hipp, James Bowman, Ed. Bessette, Oscar Holke, H. French, A. Hoek, E. Wheed, alias Snitzer, John Hoberg, Floyd Foker, Pat Grosse, John Rice, Frank Valla, Harry Morrison and John Ackermann."

To this we make the objection that the limitations stated in this clause as to the picketing complained of put the acts complained of prior to the issuance of the restraining order and go to the merits of the original action, and not to the alleged infraction of the restraining order after it was made and entered.

We also object to the following in this affidavit, and for the same reasons stated in our objection to the last preceding clause: "Said pickets form in squads of three or more; some of them use bicycles and ride up and down Conkey avenue, which is a public highway leading to the plant of the W. B. Conkey Company, and is used by over 60 per cent. of the employes of and persons having any business with the W. B. Conkey Company. Said pickets accost all persons going to and from said plant, and if the same are employed there, attempt to induce said persons not to remain in the employ of said W. B. Conkey Company or enter into its employ, or have any business dealings or connections with said W. B. Conkey Company."

We make to this clause the objections made to the last preceding clause and add thereto that the facts as recited do not appear to be a violation of the restraining order, though the Court might infer that these acts were subsequent, and not prior, to the issuance of the restraining order, it not being charged that any unlawful influence was brought to bear upon persons to induce them to quit the service of the Conkey Company, and it not being shown that the alleged picketing was for the purpose of exercising any unlawful influence upon any person in the service of the W. B. Conkey Company.

We object also to the following clause in this affidavit: "The said persons on said picket duty openly state and represent that they are there for the purpose of doing picket duty and for no other purpose."

As to Bessette, we object to this, for the reason that the statements do not appear on their face to have been made by Bessette alone, or by others in his presence or hearing, or by his procurement, or by any person with whom he was confederating.

We also object to the following clause in this affidavit: "Said pickets also patrol a short street passageway leading up to the front entrance of said W. B. Conkey's plant, and also the streets and paths leading from said plant to the Erie and Monon Railway tracks. This last said pathway is used by possibly thirty per cent. of said W. B. Conkey Company's employes."

We make to that the same objection we made to the last preceding clause and the further objection that there isn't anything brought to the knowledge of the Court as to the relative location of the Monon Railway tracks, the Erie Railroad tracks and the W. B. Conkey Company, nor anything to show an authorization in the Court to keep persons from using the Monon tracks and the Erie tracks; nor is there anything showing that the use of the Monon tracks and the Erie tracks by the persons complained of was for any reason whatsoever unlawful; nor is there any showing that the defendant Bessette was a participant, either directly or indirectly, in any of these acts complained of.

We also object to the following clause in this affidavit: "On a number of occasions I have reminded said pickets of the terms of the injunction, and they have invariably replied that they had read the injunction before, but that they did not propose to obey it."

To that we add the specific objection that the charge against Bessette in this case is not a contemptuous obstruction of public justice, or the resistance of the processes of this Court, but that he is charged with violating this restraining order.

We add the further objection that the declarations are hearsay, and that we are entitled to have made known the connection between Bessette and the persons complained of, and thereafter, if such showing were made, that we are entitled to have the conversations of the parties, and not the conclusion of this witness as to the force and effect of these conversations.

We also object to the following clause in this affidavit: "On Friday, the 6th of September, 1901, Oscar Holke, H. French and Floyd Foker congregated on the lawn immediately across the street from the W. B. Conkey Company's place of business within one hundred feet of said plant, and I approached them and asked them what they were doing. Said Oscar Holke replied, 'I am doing picket work here.' Said Foker and French were present at the time I asked said Holke and heard my question and said Holke's reply. Said persons, after their statement to me, remained there for at least two hours, and when they left three or four persons took their place. I have had similar experiences almost daily and with persons who were doing picket work, and said persons do not make any secret of the fact that they are there for picket duty and propose to do so. Among those who have been more active in such picket work are the following: John Dunlavey, John Ackermann, and William Rutz, Oscar Holke and E. Wheed, alias Snitzer."

We object to this for the reason that these persons do not assume to have been acting for Bessette, nor is there any showing that Bessette was present, or procured their presence, either directly or indirectly, or that the information ever came to the knowledge of said Bessette in such manner as that he

could deny or repudiate the statement of Holke and others as to their purpose in being present at the place mentioned.

The Court: The objections to the affidavit may be overruled and the affidavit may be read, and the defendant is given an exception.

The affidavit appears in the record at pages 165-167.

The Seventh Specification of Error.

The seventh specification of error embraces the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth errors assigned, which relate respectively to the admission in evidence of the affidavits of Jake Engle (Record, pages 241-247), Maximillian Kieser (Record, pages 248-254), Charles Minger (Record, pages 264-265), Daniel J. Sheehan (Record, pages 265-266) and John B. Horton (Record, pages 270-273). These affidavits and this specification exemplify the error of the Court in trying the defendant upon a charge of conspiracy to obstruct the due administration of justice, when the order and citation were to answer for the violation of a restraining order. This error of the Court was a transgression upon the rights of the defendant under the Constitution and the law of the land. As to the Engle affidavit, the record discloses the following:

Mr. Newberger: I will offer to read in evidence the affidavit of Jake Engle.

Mr. Rooker: Now, your Honor, I want to object to this affidavit; first, because it carries an imputation expressed that this affiant might be able to identify if he could see some of the persons who committed these outrageous assaults upon him. He says he knows some of them and he could identify the others. Now, we object to the introduction of this affi-

davit in evidence for the reason that it presents strikingly a case in which the accused ought to be brought face to face with his accuser, and we submit that under the Constitution of the United States, where a crime is sought to be charged against a defendant, carrying as this does upon its face the imputation that the sight of the accused by the assaulted party is essential to determine whether or not the accused is a party to the transaction, that the accused ought to be brought face to face with the accuser, and the accused have the right of examination; and without such right it is a denial to Mr. Bessette in this case of his protection under the law of the land, and to deny him that right would be conducive to denying him due process of law for the protection of his liberty and property.

Now, I implore your Honor to bear in mind the closing sentences of this affidavit, the horrors of it we all concede: "The persons who were present in the crowd and were taking part in the riot, as I now recall them, were: John Dunlavey, Harry Alting, Jack Sugrue, —— Hoek, Wm. Rutz, —— Eldredge, —— Gross, and Wright, whose Christian name I do not know, and at least ten or a dozen more whose names I cannot give but I believe I could identify them if I could see their faces." Now, I submit, your Honor, that without a showing as to why this very important witness making this character of accusation is not in court or could not be produced in court as against the accused, that this deposition should not be read.

I want to make specific objections to other parts of it if your Honor thinks that the deposition is not tainted with this vicious element I have indicated.

The Court: It was expressly agreed between counsel for the complainant and for the defendant, the defendant being present, that the testimony on the hearing of the charge of violating the injunction might be by affidavits or testimony orally taken in open court, or by both, at the election of the parties. It is a most singular thing, to my mind, that strikers and attorneys for strikers so persistently misunderstand and misapprehend what is meant by a proceeding to punish for contempt. I cannot believe that the attorneys who represent the strikers do misunderstand it. I think myself that one of the dangerous things in contempt proceedings is the fact that ignorant people, unfamiliar with the jurisprudence of England and this country, *do not advise these men* [are not advised] that a proceeding for the punishment of a party for the violating of an injunction is not a proceeding to punish them for the crime that they have committed against the law of the land. That, the criminal courts attend to, and the criminal law of the land, after indictment or arraignment on information and a trial by jury, punishes the crime. Courts of equity do not profess to try men by those methods. If a crime is shown, it is merely an incident; it is not the matter of crime that the court is concerned with at all, the simple issue that the court has to try is whether the injunction was issued, and lawfully issued, prohibiting the doing of certain things, and whether that has been violated; that is all. It may be violated by acts that are criminal in their nature or it may be violated by acts that are not criminal. The Court is not trying them for those acts and it is not proposing to punish the man for any criminal act that has been committed. As it has been said by the Supreme Court of the United States and other courts a thousand times,

the writ of injunction is not issued to prevent the commission of crime. That is not the purpose of it at all. It has nothing to do with restraining men from committing crime. The sole purpose is to protect men in their property rights. And it would be a monstrosity if the courts had not that power. If one of these strikers had rented a house and paid the rent of it for a year, and his landlord came before the expiration of the lease and told him to get out, that he couldn't stay, and did it without any shadow of legal right, but ordered him to get out, and would say to him, "If you don't get out to-morrow morning, I will come with a thousand men and I will push you and your wife and your children and your property into the highway," I reckon that that striker would think that this country was hardly a country fit to live in if he could not appeal to the courts to stop the landlord from violating his property rights by enjoining the landlord and his agents and abettors from pushing him into the street. Or, suppose that a lawyer for one of the strikers had rented an office and paid the rent for it. He had an office that he was satisfied with and where his clients knew where he was, and that it would injure his business and property—his pecuniary interests—if he was turned out of it, and the landlord, because he wouldn't join some lodge, would say to him, "You have got to get out, and if you are not out within twenty-four hours I will come up here with a body of men and I will throw you out." You might say to him that that is lawless; "you will injure my property; you will injure my business," and it is answered, "I don't care; I am bound to do it." I reckon that that lawyer would feel that the justice of this country was contemptible if he could not appeal to the courts and get the courts to lay their hands on

the man who was proposing to do that, and is it anything less where a man has a lawful business and is carrying it on in a lawful way? Is it any less an injury because fifty or one hundred or a thousand strikers come and destroy his business and prevent honest men, who are contented to work, by violence, by terrorism, from exercising that inalienable right which is essential to the preservation of human life and the preservation of a man's wife and children—the right to work? Now, it is for the protection of those things that injunctions are issued, and as this Court has said in opinions on file and printed in the books, and as has been said by every other court that administers justice in countries where the English-speaking people live, from England to Australia, and from Australia to India, wherever the British flag or the American flag floats in time of peace, courts from time immemorial have asserted the right of protecting property from violent and lawless invasion, not for the purpose of restraining the commission of crime—they have no thought of that—but it is to protect men in their property rights. That is the purpose of it, the sole purpose of it; and if a man invades my property rights by the commission of crime—that is, if he would kill—if somebody would kill me—the common law, the civil law, would give the administrator of my estate for my wife and children a right of action, not because the man had committed murder, not for the punishment of the crime, but for the protection and conservation of property rights that they were entitled to. So that it is a total misconception, and a fatal one, to think that a prosecution for the violation of an injunction is a prosecution for a crime committed in the violation of it. It is a misconception that breeds infinite lawlessness in con-

sequence of the ignorance of people and fostered and fed by men who are enemies of social order and of the preservation of the dearest rights of human beings, because there is no other right that is more sacred or more essential to men than the right to work without being disturbed, without being terrorized, without being interfered with, so long as they are occupied in some lawful avocation, and, really, it is treason against the dearest rights of humanity for any man to be concerned in preventing another from earning the money to feed his wife and his babes. I cannot conceive of the moral obliquity of that man who could feel that it is right, by force, or violence, or intimidation, to prevent another man from honestly working to keep his wife and babes from starvation. Your objection is overruled, and you may have an exception.

Mr. Rooker: We want to object to specific parts of it. We object to the following portion of this affidavit for the reasons stated in our first objection to the affidavit of Mr. Bogel yesterday, the part being as follows: "On the first morning that I came to the W. B. Conkey Company's plant I was met by Harry Alting near the W. B. Conkey Company's plant, and he said to me: 'You had better not go to work for the Conkey Company. You had better get out of town, and if you don't I will get two fellows after you that will slug you and get you out of the way, and only for me you would have gotten it before, but now you had better get out of town and stay away; if you don't I will see that you are put out of the way.'"

And we add the specific objection that this is hearsay; that the defendant in this case has not been cited to answer here for an obstruction of the processes of the Court, or an obstruction to public justice, *and that there has not been, and can not*

be, under the issues of this case, a charge of confederacy against this defendant, and there has not been, and can not be, a charge of conspiracy maintained against him under the issues here.

The Court: The objection may be overruled and you may have an exception.

Mr. Rooker: We make the same objections as are stated to the last preceding clause to the following clause in this affidavit: "From that time up until the evening of the 10th day of September no one seemed to pay much attention to me, but while going north on Calumet avenue on the evening of September 10th, in company with Maximillian Kieser, we first noticed four men walking abreast on the street a short distance in front of us, and we were walking a little faster than they were and overtook them. As soon as we got up to where they were they turned about and began to assault us, striking at us, and a man by the name of Dunlavey had a club, and he was raising it as if intending and attempting to strike us with the club. We passed by the first four a short distance, and then there arose from the weeds, grass and bushes, it seemed, about a dozen or more men. Some of their faces I know and some of their names I know, but I do not know the names of all of them. However, I do know that they composed what is called the 'wrecking crew' from Chicago, Illinois. Mr. Kieser was severely beaten with rocks and cut in different places upon his body. I was not struck because I stated to them that if they attempted any violence upon me, that I would 'certainly shoot them, as I was prepared to do so.' At that they left me and directed all of their assault upon Mr. Kieser. The persons who were present in the crowd and were taking part in

the riot, as I now recall them, were: John Dunlavey, Harry Alting, Jack Sugrue, —— Hoek, Wm. Rutz, —— Eldridge, —— Gross and Wright, whose Christian name I do not know, and at least ten or a dozen more whose names I do not know, but I believe I could identify them if I could see their faces. They also created a great deal of disturbance and were very boisterous, and different ones called out: 'Don't let him go,' referring to me, and stated, referring to Mr. Kieser, 'Knock his damn head off,' 'Kill the son of a bitch,' and expressions of such character. All of the statements which were made at that time, and the language which was used by the persons committing the riot I cannot give at this time, but the expressions which I have given above are the substance of the language used, and all of their statements were of like character. They were determined to do us extreme violence, and if it had not been for us calling for help and calling so loud that persons 200 or more feet away heard us, it is difficult to say whether either one of us had escaped from them alive."

The Court: The objection will be overruled and you may have an exception.

The affidavit of Jake Engle was thereupon read in evidence. (Record, pages 246-247.)

As to the affidavit of Maximillian Kieser, the record shows the following exceptions:

Mr. Newberger: We will offer to read in evidence the affidavit of Maximillian Kieser.

Mr. Rooker: As to that we make the same objection that we made generally and in its entirety to the last affidavit, and I want to add—

The Court: You mean the affidavit next before the last. The last affidavit I suppressed.

Mr. Rooker: Yes, your Honor, I stand corrected. If it will not be taken that we consent to the introduction in evidence of these affidavits I shall not renew the objection specifically as to each. If the record may be made to show that all of them are introduced over our objection, as stated in regard to the Bogel deposition, why I will not renew it. I do not care to extend the record.

The Court: The Court will not allow an exception to the submission of evidence by affidavit, for the reason that it was agreed on the 3rd of October, by counsel for defendant, in the presence of the Court and in the presence of the defendant and in the presence of the complaining party, that the evidence might be introduced by affidavit or oral evidence, or by both, at the option of either party, and for that reason the Court will not allow counsel to have any exception to the admission of evidence simply because it is contained in an affidavit. In other words, when a case is brought on for trial the Court will not allow counsel to repudiate an agreement solemnly made in open court in the presence of the defendant.

Mr. Rooker: Will your Honor allow us an exception as to the rest of it?

The Court: Oh, yes, any other objection; I have been allowing any objection that goes to the whole or any part of the deposition on any other ground than that.

Mr. Newberger: I want to say this: That we will take our chances, with the permission of the Court, as to the propriety of introducing any deposition as a whole, so that any objection

as to the materiality of the deposition as a whole may be regarded as made; but objections to parts of the deposition we would not consent to, an objection of that character being considered made; we would want the objections made specifically and ruled on as the depositions are read.

Mr. Rooker: Then may the record be made to show that the general objection goes to all and if a specific objection is desired it may be made later.

The Court: No, as each affidavit is offered counsel may note his objections to the whole or to any part of the testimony on the ground of irrelevancy or immateriality, or any other ground except the ground that the testimony is embodied in an affidavit. The Court will not allow an exception to that for the reason that on the 3rd of October, in open court, it was agreed, as I have stated, that the trial might be had upon affidavits or oral testimony, or both, at the option of either party. That objection the Court will not allow to be taken, because to do it would be in violation of a solemn agreement made in open court, and I will not allow it to be withdrawn.

Mr. Rooker: Will your Honor allow the record to show that we offered [asked leave] to withdraw it?

The Court: The Court will allow you to show that on Saturday preceding the Wednesday when such a request came up such request was made and that the Court rejected it.

Mr. Rooker: We have taken the opinion of the Court upon these law questions that we think material in this case, and I do not like to be put in the attitude of combating what the Court has settled to be the law of the case.

The Court: If you think that there is any further question

that you might inject into the record that you think might be of material assistance to your client, it is your duty to do it.

Mr. Rooker: That is why I ask that the general objection may be shown to be introduced as to each affidavit.

The Court: Ordinarily when a man has one exception it is as good as a thousand, provided they all cover the same thing.

Mr. Rooker: With that understanding I shall not renew the objection each time.

The Court: If any of the views which you have entertained are sound, the Court has announced his views, and you have it in the record; and I do not believe you can raise any other question except the one which I said the Court would not permit you to raise for the reason that it would be in violation of the agreement you made in open court. But still, as each affidavit is offered you may state any objection you please to the whole of it or to any part of it. It may be that there are parts of it that the Court would strike out. Already the Court has stricken out a part of one affidavit, and the Court has suppressed the whole of an affidavit on its own motion, and I shall do so in the future if I see anything that occurs to me to be in conflict with the views that I have stated; I shall strike out the evidence. *I have stated that this prosecution is against Mr. Bessette and these other men, which charges a combination or conspiracy to do acts that are forbidden by the restraining order, and I have stated my view of the information, and then I applied an ordinary rule that obtains even in the trial of murder cases, that where a conspiracy is shown to do a criminal act or an unlawful act, or an act forbidden by a restraining order, all who participated in it, aided, advised, con-*

sented or directed are equally guilty with those whose hands did the act. So I understand the law to be. If I, as the leader of a strike, directed the strikers to do picket work or intimidate men from going to their work, that is in violation of the injunction, although I might be a thousand miles away from it, I would be just as guilty as the man who actually does the act of violence. I may be wrong, but that is the way I understand the law. If I would tell a thousand men to go down and knock somebody's head off, I might sit in my chambers or in the courtroom here, yet if they went and did it I would be just as guilty; even in a criminal trial, I could be indicted and prosecuted, convicted and probably be punished more severely than my tool, who did the act. I think the same law applies in this case. Here is a restraining order. Men are forbidden to do certain things. One, two or three men are selected as leaders; they understand the situation; they issue their commands; they give their orders; and their ignorant tools go on and perform the acts. I understand the law to be that a man who directs a thing is just as much guilty as though he went out and did the thing with his own hands; I may be mistaken, but I have ruled that way, and I think I understand the law, and shall hold that way until corrected by some superior authority. I am constrained to hold that way because I honestly believe that to be the law. Of course, I may be mistaken, but it is my duty to administer the law as I understand it, and if I do not understand it aright the parties can get their remedy from another tribunal. But I do not want to limit counsel at all. I will permit you to make any objection to any affidavit that is offered in evidence excepting the one objection that is raised upon the agreement

made in open court on the 3rd of this month, when the day was fixed for this trial and time given to parties to prepare for trial, when they were entitled to know what sort of proof would be received by the Court. It was then agreed that affidavits should be received on either side, and that oral testimony should be received on either side, either or both. Now, as to that, as I have said, I cannot permit any question to be raised in court about that. Any other exception you want to take, you may make it.

Mr. Rooker: I did not make the observation in the spirit of criticism on the effort of the Court to restrict me at all. I disclaim any intention to suggest anything of that character. I merely made it on the question of saving time.

The Court: The case is an important one; important to your client; I regard it as important that it should be understood generally that the courts have the right to protect people in the enjoyment of their property and that the trial of such a case is not a trial of a criminal case at all; it is simply a question: Has the injunction which was issued to protect the private and property rights been violated? I said that if it was invaded by a man committing a crime, the Court will punish the violation of the injunction, not because of the fact that a crime has been committed in the violation of it, and it would not regard that fact to any greater extent except as showing that the injunction had been violated—but it does not try that—it tries the single issue: Was the restraining order violated, and was it violated purposely and not innocently? If anybody made a mistake, does an act that is in violation of the restraining order by oversight, or anything of that sort, it would not hold him guilty.

Mr. Rooker: I made the general objection that was made to the Bogel affidavit.

The Court: You may have the benefit of the general objection that was made heretofore.

Mr. Rooker: It was the objection that was made to the jurisdiction of the Court.

The Court: Oh, yes; that has been presented already a dozen times, in every conceivable phase, so that if I am not in error about that it will be shown. In the first place, it appears upon the face of the information that Mr. Bessette was not a party to the original bill, nor to the original writ of injunction. He is not charged that way. He is charged by coming in and knowingly and purposely doing acts in violation of the injunction. If that does not make him answerable—I have held that it does—then he cannot be held in this case. After an injunction is issued restraining parties named in the bill, then if aiders and abettors may come into this State from Illinois, or any other State, and knowingly violate the injunction with impunity, why, then, I have been proceeding erroneously from the very start. I have held that every man, whether he is named in the injunction or not, who comes in knowing there was an injunction and who purposely and knowingly aids, abets and assists those who were enjoined in violating the injunction, is equally guilty with those who were named in the writ. Now, I may be wrong about that, but that is the law as I understand it.

Mr. Rooker: Would your Honor care, at this time, to have a presentation of the authorities on that identical question?

The Court: Oh, no; I will hear that when the evidence is taken; then I will hear you all upon all phases of it.

The affidavit of Maximillian Kieser was then read in evidence. (Record, pages 252-254.)

The Eighth Specification of Error.

The twenty-first point in the assignment of errors relates to the action of the Court in excluding the affidavit of Ida Adams. (Record, page 120.) This affidavit, and proceedings in reference to it, appear at pages 573-576. There was a large amount of evidence offered, similar to that contained in the affidavit of Miss Adams. It all went to the merit of the controversy between the W. B. Conkey Company and its employes. The evidence offered was of intolerable conditions in the service, long hours, meager wages, vile and abusive language used by Conkey toward girls in his service, etc. The law questions desired to be raised and tested were: (1) Whether Mr. Bessette had really made himself a party to the controversy by his conduct in the premises; (2) if he had so become a party and his answer was not sufficient on its face to require his discharge, then might he controvert the merits of the action; (3) ff he might not controvert the merits of the action, what defenses would be available to him in this proceeding, and (4) to demonstrate the differences between the objects of the strikers and those of Mr. Bessette. The views of the trial court are best expressed in its own language, and the record, beginning at the foot of page 573, is quoted as follows:

> Mr. Rooker: Now, if the Court please, I want to introduce the affidavit of Ida Adams in evidence, for the purpose of showing our absolute sincerity and belief in our ability to sustain the charge that Mr. Conkey was requiring services under unfair conditions.

The Court: What earthly connection has that got with this case?

Mr. Rooker: We think it has this: That this trouble was not started by the discharge of Alting, but because of the unfair conditions existing there.

The Court: I don't care whether it started by his fault or by the fault of Alting. The only material issue is, did Mr. Bessette, knowing of this restraining order, violate it; that is all I have to try.

Mr. Rooker: Well, there have been associated with Mr. Bessette a great many things that are chargeable to other people, and I spoke of that only for the purpose of illustrating our point. Suppose we would show that there had been a system that had been so intolerable that this strike started as a result of it; and under those conditions an innocent man would come in; and then the innocent man would be accused and your Honor would be called upon to determine his liability; to what extent should he be held responsible for outbreaks under such intolerant conditions?

The Court: Now, the Court will not try here the question whether or not Mr. Conkey behaved himself properly or not, or whether the men under him behaved themselves properly or not; or whether they were justified in striking; that is totally immaterial. This Court did not issue an injunction in reference to that; this Court simply issued an injunction against these men interfering with Mr. Conkey's business. That is the issue, and the only issue that Mr. Bessette is being tried for in this court; and as to his motive, it has been decided a hundred times, with which he interfered, that goes simply to the question of the amount of his punishment, but

what was the cause of the strike, whether it was the fault of one or the other, or both, that is totally immaterial.

Mr. Rooker: On the question of motive, we have the right to show that they have a motive separate and distinct from that of Mr. Bessette.

The Court: Well, the Court has ruled upon it. I don't care to hear that any further.

Mr. Rooker: Well, we will offer in evidence the affidavit of Ida Adams, and I will state to your Honor that it is quite in line with Miss Molinsky's evidence.

Mr. Newberger: We object to that as immaterial.

The Court: It may be excluded and you may have an exception.

The substance of the affidavit of Miss Adams (Record, page 575) was as follows:

Ida Adams, being first duly sworn, on oath says: I reside in the city of Hammond, Indiana, and my age is 18 years. I am a bindery girl by occupation. I entered the service of the W. B. Conkey Company on the first Monday in September, 1899, and continued to work for that company until the 20th day of August, 1901, when I, with more than 200 other girls employed in the bindery department, quit that company's service. I am now employed by R. R. Donnelly & Sons, printers and publishers, at the city of Chicago. It had become intolerable to continue in the service of the W. B. Conkey Company on account of the long hours of daily service, the meagerness of the wages paid, and the disrespectful conduct of Conkey and his forelady toward the girls in his service. These conditions we were helpless to overcome without organization,

and they were the causes leading to the organization of a union of the bindery girls employed by the W. B. Conkey Company. Our quitting the service of that company was entirely voluntary on our part and was done to bring about a change in the conditions of our service. The language and remarks of which we complained were violent and profane, and were reflections upon the characters of the girls in the service. Some of the remarks made were too vile to be repeated.

The Ninth Specification of Error.

The twenty-second assignment of error is predicated on the Court's ruling in excluding from evidence the affidavit of John Dunlavey. (Record, page 121.) This assignment constitutes the ninth specification of error. It appears, with the proceedings concerning it, on pages 576-578 of the record. It was excluded for the same reasons stated, *supra*, as to the affidavit of Ida Adams. The law questions presented by the Court's ruling include those involved in the ruling on the affidavit of Miss Adams, and the further one of fraud practiced by the complainant on the Court to obtain jurisdiction. (*Eberly vs. Moore*, 24 How. 157; *Anderson vs. Watt*, 138 U. S. 694, 701, and cases cited; *Denny vs. Pironi*, 141 U. S. 121; *Southern Express Co. vs. Todd*, 56 Fed. Rep. 104; *Danahy vs. National Bank*, 64 Fed. Rep. 148; *Hewitt vs. Story*, 64 Fed. Rep. 510; *Excelsior Co. vs. Brown*, 74 Fed. Rep. 321; *Alabama Ry. Co. vs. Carroll*, 84 Fed. Rep. 772; *Lengel vs. American Smelting Co.*, 110 Fed. Rep. 19.) The Court will note that in this case this issue was raised (1) by Mr. Bessette's special appearance and plea to the jurisdiction and (2) by his answer, and (3) that it, also, appeared upon the face of the petition for attachment.

The substance of Dunlavey's affidavit, which was made on October 7th, was as follows:

I am a resident of the State of Illinois, and have been a citizen and resident of the city of Chicago, in that State, continuously since in June, 1901. I am the same John Dunlavey who is named as a defendant by the plaintiff in the cause above entitled. At the time of the filing of the bill for an injunction in said cause I was not a citizen and resident of the State of Indiana, but was a citizen and resident of the State of Illinois. I am personally acquainted with Edward Wheed, who is also a defendant in said cause under the name of Wheed, alias "Snitzer," and I have known him for a year, during all of which time he has been a citizen and resident of the State of Illinois, and not a citizen and resident of the State of Indiana at any time. I am also personally acquainted with Oscar Kohlstadt, who is also a defendant in said cause, and I know that said Kohlstadt is a citizen and resident of the State of Illinois, and not a citizen and resident of the State of Indiana. I am also personally acquainted with Wheeler Armstrong, and know that he has resided in the city of Chicago, State of Illinois, in his lifetime, and that he was a citizen and resident of the State of Illinois at the time of the bringing of this suit. Several months ago, and long before the bringing of this suit, I explained to the foreman of the W. B. Conkey Company why it was I resided in the State of Illinois, and I believe and state the fact to be that said W. B. Conkey Company knew at the time of the filing of the bill for said injunction that I was not a citizen and resident of the State of Indiana, and I believe that said Conkey Company fraudulently made the averment that I was a citizen and resi-

dent of the State of Indiana for the purpose of having this Court assume a jurisdiction over said cause to which this Court was not lawfully entitled.

The Tenth Specification of Error.

This specification is predicated on the twenty-third assignment of error (Record, page 123), and relates to the action of the Court in excluding the offered evidence of James M. Lynch, President of the International Typographical Union, as to the controversy between the printers, on one hand, and the pressmen and bookbinders, on the other hand, over the registered label known as the "Allied Printing Trades Council" label. (Record, page 404.)

Michael Colbert, President of Chicago Typographical Union, had previously testified that there were some 2,500 union printers in Chicago; that it was desired that none of them should go to Hammond under a misapprehension of facts; that it was reported that an effort might be made to put the registered label in at Conkey's through the instrumentality of the pressmen's and the bookbinders' unions, and that, to conserve the interests of the Typographical Union in these particulars, Mr. Bessette was sent to Hammond. It had been shown that John F. Geckler, who organized the Pressmen's Union at Conkey's, and E. W. Tatum, President of the Bookbinders' Union, were upon the scene organizing the members of their crafts in Conkey's service long before Bessette went down to Hammond. The testimony of the President of the International Typographical Union was, therefore, material to show that Mr. Bessette was present to conserve a cause in which he and his associates had direct property interest—the proper use of the label and the scale of wages in the competitive district of Chicago, where they were employed, and the integrity of their

union, whose purposes are in every respect proper and lawful, and which have, by their worth, commanded the almost universal approbation of the printing world. These interests and purposes Mr. Bessette had a right to establish in order that his conduct in the premises might not be construed abstractly or solely from Conkey's point of view, but from the point of view of mutuality. The issue to Bessette and his union was that of the full dinner pail to a hungry workman and a distressed family. This issue the members of the United Typothetæ were willing to settle on the broad basis of humanity, of live and let live, of the brotherhood of man and the fatherhood of God. (Arbitration agreement, Record, pages 291-296; United Typothetæ agreement for shorter workday, Record, pages 306-307; Union Printers' Home, Record, pages 428-450; preamble, Record, page 455; cemetery statistics, Record, pages 497-521; prospectus of the Union Printers' Home, Record, pages 522-552; financial exhibit of the Union Printers' Home, Record, page 553.) The record, at page 585, discloses the ruling as to the testimony of Mr. Lynch. The offered evidence was as follows:

> Mr. Rooker: We offer to prove by this witness, in answer to this question, that there is and for more than a year last past has been a controversy between the International Typographical Union, on the one side, and the International Brotherhood of Bookbinders with the International Printing Pressmen and Assistants' Union, on the other side, as to the right of the pressmen and bookbinders to put the Allied Printing Trades Council union label in offices and on their work when not done by the members of the International Typographical Union.

The Eleventh Specification of Error.

The twenty-fourth and twenty-fifth errors assigned are as follows:

24. The finding of the Court is not sustained by sufficient evidence.

25. The finding of the Court is contrary to law.

These assignments may be considered together. They involve (1) the construction of the restraining order, (2) the interpretation of the petition for attachment, and (3) the finding of guilty of an offense for which Mr. Bessette, at the instance of a private suitor in a civil suit, could be fined $250.00 for the use and benefit of the United States.

Where is the instance in which Mr. Bessette effected an injury to the rights of the W. B. Conkey Company as they were to be conserved by the record in this cause? Nothing whatever was proven against him. Let us, in review, summarize the evidence given by the complainant's witnesses.

Anton Bruckner (Record, page 175):

113. X.-Q. Mr. Bessette wasn't a striker? A. No, sir.

114. X.-Q. You never heard Mr. Bessette call anybody vile names? A. No, sir.

115. X.-Q. Did you ever see Mr. Bessette doing anything there that wasn't gentlemanly and entirely proper? A. I never saw him doing anything out of the way; that is, in regards to not being a gentleman.

116. X.-Q. Did you ever see him commit any act of violence or commit any sort of depredation against Mr. Conkey?

A. I never was with him enough to see him.

117. X.-Q. There wasn't any reason why he should suspect you or act differently in your presence or act different than when others were around? A. No, sir.

GUS WANGEMAN (Record, pages 185-187):

53. X.-Q. Did you ever see Mr. Bessette down at the Conkey plant or around there? A. I did not.

54. X.-Q. What was the nearest to the Conkey plant that you ever saw Mr. Bessette? A. Every time I saw Mr. Bessette it was down on Homan street, near State.

55. X.-Q. And never within a mile and a quarter of the Conkey plant? A. No, sir.

* * *

By Mr. Rooker: 64. X.-Q. Did you hear Mr. Bessette say to any person that the person would be taken into the Chicago Typographical Union if he quit working for Conkey? A. I did not; I heard them tell them they would call a special meeting to take action as to whether they would do that or not.

* * *

71. X.-Q. When you saw Mr. Bessette talking with them what was the character of their conversation? Were they standing on the street or were they going somewhere? A. They were standing on the street.

72. X.-Q. As two gentlemen would meet each other? A. Yes, standing and talking together.

73. X.-Q. You don't know what they were talking about? A. No, sir.

74. X.-Q. Don't know whether they were talking about the strike or not? A. I do not.

75. X.-Q. Did you ever see Mr. Bessette do any picketing round there? A. No, I did not.

76. X.-Q. Did you ever see Mr. Bessette or hear of Mr. Bessette using any vile language or epithet toward any person? A. I never did.

77. X.-Q. Have you told us all that you ever heard Mr. Bessette say? And all that you ever saw him do about there? A. I have.

78. X.-Q. Mr. Bessette I understand was not present when you heard Alting and Grosse and some other person talk about going to import a wrecking crew from Chicago? A. No, sir.

79. X.-Q. When was that conversation with reference to the time you first saw Mr. Bessette? A. The conversation that I was present at?

80. X.-Q. No, the conversation in which the wrecking crew was talked about: when and where was that conversation?

By the Court: 81. X.-Q. I understood you, Mr. Witness, on the direct examination, to say that after the injunction had been issued that some people up there who were connected with the strike said that they would have to import a wrecking crew from Chicago to fix the men that wouldn't come out? A. Yes, sir.

82. X.-Q. That is the way I understood it: is that correct? A. That is correct.

83. X.-Q. Who were the persons? A. I give the names of those that were there. They were Alting, Grosse and—

84. X.-Q. Who was the other? A. Mr. Holke.

85. X.-Q. (By Mr. Rooker.) Do you remember when and where that conversation was about the wrecking crew with respect to when you first met Mr. Bessette or saw him? A. That conversation about the wrecking crew? I heard that on Homan street, between State and Sudway street. It was a week—or the first week in September after Labor Day.

VENA R. HUNT (Record, pages 199-200):

43. X.-Q. Did you ever hear anybody call any of these people that you had with you "rats" and "scabs," Mr. Hunt? A. No, sir, I did not.

44. X.-Q. Did you ever see any of these men who accosted you use any violence or any vile language toward you or the men with you? A. Well, I don't know as I saw them use any violence more than I spoke of taking hold of them.

45. X.-Q. It wasn't anything that any of them objected to, was it? A. I didn't think it was pleasant.

46. X.-Q. The men made no objection, did they? A. Well, they couldn't very well; the only thing they could do was to get out there and do the best we could.

47. X.-Q. The men didn't make any objection, did they? A. I don't see how they could make any objection without stirring up a fight.

48. X.-Q. What did your men say when these men spoke to them? Did they listen to them patiently? A. I always told them—

49. X.-Q. I am not asking you what you told them. They listened patiently, didn't they, to the strikers? A. They had to when waiting for the car.

50. X.-Q. And then your men made up their minds one way or the other and then acted? A. Yes.

51. X.-Q. There never was any violence committed? A. I don't think there was, no, sir.

52. X.-Q. Now you say the picketing was worse before the restraining order than afterwards? How many times since the restraining order have you been down there? A. I couldn't tell you, because sometimes I have been down there twice a day and I have been down nearly every day right along.

53. X.-Q. Not always with men? A. Yes, sometimes with one or two men. We had to send out a great many men.

54. X.-Q. Since the restraining order, how many men have you taken down there and escorted, actually escorted to the Conkey plant? A. I haven't any idea.

55. X.-Q. How many men have you had taken from you since the issuance of the restraining order? A. It would be hard to state that, either.

56. X.-Q. What is your best impression? A. Well, it might have been a dozen or fifteen.

57. X.-Q. How many men have you taken down and actually escorted to the plant? A. Well, you mean down to Hammond and clear to the plant, or that I turned over to some other officer of the company to take to the plant?

58. X.-Q. Yes. A. As high as eighty-five or one hundred.

59. X.-Q. So that you lost fifteen per cent. of the men that you took down, possibly? A. I think we did, yes, sir, about that.

60. X.-Q. Do you know, Mr. Hunt, whether or not the men that you lost there were actually seeking work or were

somebody that wanted to travel down with you and find out what the Conkey people were doing? A. Well, to the best of our knowledge, they were men who wanted to go to work. We always questioned them carefully and didn't take them unless we felt satisfied they wanted to go to work.

61. X.-Q. Did you tell them the same things that they always learned from the strikers? A. Yes, sir; we told them the situation down there. We didn't take anybody that wasn't perfectly willing to go.

62. X.-Q. You took nobody but what he said was willing to go? A. No, sir.

63. X.-Q. When these men actually quit, what did they say to you or what did you say to them about their not continuing on down to the plant? A. Well, if they went off with other fellows I didn't chase after them. I always asked them if they wouldn't come along. If they didn't choose to do so, I let them go.

64. X.-Q. They would smile at you and tell you no, wouldn't they? A. That was the size of it, yes, sir.

65. X.-Q. Now, you say you saw Mr. Bessette round there. Did you ever have a conversation with Mr. Bessette? A. No, sir, I never did.

66. X.-Q. Did you ever ask Mr. Bessette not to interfere with you or the men with you? A. No, sir, I did not.

67. X.-Q. Why didn't you tell them you would like to go unmolested? A. I didn't have anything to do with him. I attended to my business as best I could.

68. X.-Q. You never made any complaint to Mr. Bessette that his action was offensive to you. A. No, sir.

69. X.-Q. You never heard anybody else complain to him? A. I never heard anybody complain to him.

70. X.-Q. Did you ever see him do anything there that was rude or violent in any way? A. No, I didn't.

CHARLES MEYERS (Record, pages 176-181):

28. X.-Q. Did that have any effect upon you, his telling you that a man who worked for the Conkey Company was a scab and a rat? A. No, sir, only it shows his contempt for me.

29. X.-Q. It didn't have any effect upon you? A. No, sir.

D. R. HUNTINGTON (Record, pages 203-223): This witness testified in contradiction of his affidavit, previously made, that Bessette told him he had charge of the men out on strike, and that they were expecting a wrecking crew down there the next day; that Bessette told witness the boys had evil designs on him, but that if the witness would come out Bessette would call off the dogs of war. This witness was stopping at the strikers' headquarters, and he got out of bed to go to a saloon where he could get the alleged information he presumed to have. He swore that he wasn't scared, and that, while he was given a union card for work in Chicago, yet he gave that card to his children to play with because he "didn't want to work in Chicago; he wanted to work in Hammond." He described himself as a professional strike-breaker, as follows: (Record, page 221.)

199. X.-Q. Now, Mr. Huntington, you have a great deal of feeling against the Typographical Union and against Mr. Bessette, have you not? A. I have considerable feeling against the Typographical Union.

200. X.-Q. How long have you entertained that bitterness of feeling? A. For a great many years.

201. X.-Q. To what extent has that bitterness of feeling influenced your conduct? A. Well, I have gone out in times of a strike and taken men into work, and I stand ready and willing to do it again.

202. X.-Q. How long have you been pursuing that course, Mr. Huntington? A. I couldn't tell you the number of years.

203. X.-Q. How many years have you gotten men to take the place of people who quit work? A. Good many times.

204. X.-Q. And you were doing that always because of your hostility to the Typographical Union? A. Yes.

205. X.-Q. Do you have that same feeling against Mr. Bessette that you have toward the Typographical Union? A. No; I have no feeling against Mr. Bessette particularly until he molests me, and the man that molests me or my family, he must look out, for I am going after him.

206. X.-Q. And to what extent does that bitterness influence your testimony in this case? A. Not one particle.

207. X.-Q. And to what extent did that influence your deposition that you made before Mr. Bogle on the 10th of September? A. I stated there the truth.

208. X.-Q. The question is, did it influence you—your feeling of hostility toward the Typographical Union or Mr. Bessette—did it influence you as to what you stated in your affidavit? A. No, sir; it didn't influence me a particle at the time I made the affidavit.

209. X.-Q. Did you ever have any experience with this wrecking crew yourself?

The Court: You need not answer that unless it is confined to this wrecking crew at Hammond.

210. X.-Q. That is what I meant—at Conkey's? A. No, sir.

211. X.-Q. Did you ever see the wrecking crew or members of it? A. No, sir.

The testimony of Huntington as to what occurred at Fitzpatrick's saloon was controverted by all the people present, as well as by Huntington's previous affidavit. The two statements of Huntington can not be reconciled, and his testimony shows that he was unworthy of belief. For the Court to place upon him the garb of an honest workingman was worse than taking the coat of Joseph and turning it over to Benjamin; it was like putting it upon a Judas.

Louis Florence (Record, pages 228-229):

103. X.-Q. You spoke about some members of a wrecking crew and gave their names that were going out to fight. Who were those fellows? Yourself was one? A. Yes.

104. X.-Q. Who were the others? A. Gus Collins.

105. X.-Q. And who else? A. Hugh Wiley.

106. X.-Q. Yes, and who else? A. Pat Rice.

107. X.-Q. R-i-c-e? A. Any old way.

108. X.-Q. Well, which is it—Wright or Rice? A. Rice.

109. X.-Q. Who else? A. A whole gang.

110. X.-Q. Well, do you know any of the others? A. I know them all, but I can't think of them.

111. X.-Q. How long have you known them? A. Ever since I have been there.

112. X.-Q. They were all former employes of the Conkey Company, were they? A. Yes, sir.

113. X.-Q. Were any of them thugs from Chicago? A. I don't know that.

114. X.-Q. You know all of the fellows that were with you? A. Yes, sir.

115. X.-Q. None of them were pressfeeders from Chicago? A. No, sir.

116. X.-Q. About what were their ages? About your age? A. We had some bald-headed men in there.

117. X.-Q. But they were all men that you had become acquainted with in the service of Mr. Conkey? A. Yes, sir.

118. X.-Q. Were there any members of any of the Chicago labor organizations in that crowd? A. No.

119. X.-Q. Did you see Mr. Bessette there or about there on that occasion? A. No, sir.

* * *

122. X.-Q. Did you ever hear him countenance any violence or anything of that sort? A. No, sir.

123. X.-Q. Did you ever hear him countenance any vile language? A. No, sir.

124. X.-Q. He was always conducting himself as a gentleman? A. Yes, sir.

125. X.-Q. He showed no disposition to fight or to make any trouble, did he? A. I just told you I never talked with him.

I submit, in all confidence, there was no evidence upon which Mr Bessette could be fairly convicted of doing an injury to the W. B. Conkey Company within the prohibition of the restraining order. And it would seem that the Circuit Court was likewise persuaded, for the Court gave no relief to the W. B. Conkey Company; the fine was made payable to the United States. (Record, page 608.)

Such uncertainty as to the outcome was forecasted by the learned judge who tried the cause, for at different periods throughout the trial his remarks indicated that Mr. Bessette was being tried (1) for the violation of a restraining order, (2) for the contemptuous obstruction of the due administration of justice, and (3) for conspiring to do an unlawful act. In this view of the record the comments of Mr. Justice Matthews on the Massachusetts Bill of Rights seem to have particular significance. (*Yick Wo vs. Hopkins*, 118 U. S. 365.)

The trial Court's reflections upon labor organizations seem also to require consideration. In *Railroad Company vs. Stout*, 17 Wall., at page 664, Mr. Justice Stout, speaking for the Court, said: "Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge."

And in these observations the Supreme Court merely reiterated Blackstone's famous tribute to the jury system.

The trial Court's comments on the fact that the strikers desisted when the restraining order was issued seem, also, to be a misconception. It is true that American citizens desist under such circumstances. But it is not from cowardice nor from any repentant sense of previous error; it is rather because American citizens are

respectful of the law than that they fear the courts, which are their own institutions. It is seldom such observations as those made by the trial Court appear in the literature of the judiciary, but even in those instances the courts would not be less esteemed by the people if the courts ascribed some credit to the good character of American citizenship as a factor in bringing order out of chaos.

CONCLUDING SUMMARY.

The following conclusions arise out of the foregoing statutes and authorities, and the extracts from the record of the Court.

The trial Court's theory is conclusively shown by the record to have been that Bessette was charged with contempt of Court for violating a restraining order. If it were admitted, as upon demurrer, that the petitioner's evidence was wholly true, and that the defendant's evidence was withdrawn, and that all reasonable inferences were to be drawn against Bessette, still Mr. Bessette committed no offense for which he could be lawfully punished in this proceeding. The charge being one of indirect contempt, I submit:

The offense of obstructing the due administration of justice is wholly distinct and different from the offense of violating a restraining order, for

a. The offense of obstructing the due administration of justice is a statutory crime against the sovereign. (R. S., Sec. 5399.)

The offense of violating a restraining order is a fiction of equity to conserve the rights of the litigants and the dignity of the Court in which the order was made.

b. The offense of obstructing the due administration is to be tried within the venue of the wrongful act and does not depend upon the residence of the defendant.

The offense of violating a restraining order, in suits where the jurisdiction depends solely upon diverse citizenship, can be tried only by a court having jurisdiction over the place of the defendant's residence, and the venue of the wrongful act is wholly immaterial.

c. The offense of obstructing the due administration of justice is punishable with a fine, punitive in its nature, intended to reform the culprit and to deter others, and the fine goes exclusively to the use and benefit of the sovereign.

The offense of violating a restraining order is punishable by a fine remedial in its nature, intended to be compensatory and for the use and benefit of the party aggrieved; imprisonment may be conditionally added to enforce obedience and restitution.

d. The offense of obstructing the due administration of justice may be a subject for presentment by a grand jury and for trial by jury.

The offense of violating a restraining order is never a subject for presentment by a grand jury or for trial by jury.

e. The offense of obstructing the due administration of justice, as such, is punishable by a court of equity in contempt proceedings only when the offensive act is so near as to disturb the Court.

The offense of violating a restraining order is always punishable by a court of equity in contempt proceedings and never otherwise.

When we come to consider the nature of contempt proceedings we find the broadest distinction between the duties and powers of courts over persons and the duties and powers of courts over things. A mere *lis pendens* is not the equivalent of *res in custodia legis*, when it comes to invoking the powers of a court of equity in proceedings to punish for indirect contempt.

a. A judgment or proceeding strictly *in personam* depends for its validity upon jurisdiction over the person, and that, in turn, may depend upon the place of residence of the parties, and there is no *res* to come into the custody of the Court. (Chief Justice Marshall, in *Mankin vs. Chandler Company*, 2 Brock. 125; S. C., Fed. Cas. 9030; *Woodruff vs. Taylor*, 20 Verm. 65; *Cross vs. Armstrong*, 44 Ohio St. 623; *Robinson vs. Hurley*, 11 Ia. 410.)

A judgment or proceeding *in rem* depends for its validity upon jurisdiction over the thing and the place of residence of the parties and is wholly immaterial.

b. A *lis pendens* may be entirely personal in its application so that the Court will act throughout the proceeding solely with respect to the parties.

Res in custodia legis can never be entirely or strictly personal in the Court's application of the law, nor can the Court ever act upon the parties without consideration for the subject matter.

c. A mere *lis pendens* may result in a purely personal judgment.

Res in custodia legis can never be conserved by a merely personal judgment.

d. In acting *in personam* the Court must by its powers acquire jurisdiction of the parties who are to be found.

In acting *in rem* the Court must by its process acquire jurisdiction of the thing, and the jurisdiction so acquired binds the world.

e. In proceeding for indirect contempt, in suits *in personam*, the Court cannot act except upon a party to the record, either specifically so made, *eo nomine*, or included in a class whence his identification may be properly established if required. (*In re Lennen*, 166 U. S. 548.)

In proceeding for indirect contempt in actions *in rem* the Court may always act upon everybody whose conduct affects the *res*, and no one can be a stranger to a proceeding *in rem* whose acts bear upon the property which is properly in the custody of the Court. (*Arthur vs. Oakes*, 63 Fed. Rep. 310.)

f. In proceeding for indirect contempt in suits *in personam* a stranger to the record can not be held unless he offend so "near" to the Court as to obstruct the administration of justice. (R. S., Sec. 725.) And in this statute the words "near to the Court" relate to the propinquity of the act, and not to its cause or sequence. (*In re Savin*, 131 U. S. 267.)

In proceedings for indirect contempt in actions *in rem* a stranger to the record offends when he disturbs the possession of the Court anywhere within its territorial jurisdiction. The considerations for this rule are wholly different from those which apply wherein suit is *in personam*. (*Mankin vs. Chandler Co.*, 2 Brock. 125, Fed. Cas. 9030; *Pennoyer vs. Neff*, 95 U. S. 714; *McArthur vs. Scott*, 113 U. S. 340, 387; *Brigham vs. Fairweather*, 140 Mass. 413.)

In the suit out of which this proceeding arises the W. B. Conkey Company has not submitted its property or franchises to the custody of or administration by the Court (*Arthur vs. Oakes*, 63 Fed. Rep. 310), so that there was no *res* involved. Nor was there any Federal question involved. (*In re Lennen*, 166 U. S. 548). Nor was there any public duty to be performed or any public right in peril. (*In re Debs*, 158 U. S. 564.) But the complainant reserving to itself the management and control of all its property and rights, and without any Federal question, right or duty, but predicating its appeal to the jurisdiction of a United States Court solely upon the ground of diverse citizenship, it asks an order against certain defendants, whom the complainant elects to sue, to restrain those persons from the commission of trespasses, and it asks the Court to grant in these premises as against a stranger the same exercise of great powers which would be granted in the event the very custody of the Court over property, or its jurisdiction over defendants subpoenaed, were assaulted and put in jeopardy.

In these respects the record falls short of showing a valid judgment against Mr. Bessette, viz.:

a. The original proceeding or suit was *in personam* and not *in rem*.

b. The appellant was a stranger, both in name and class, to the original proceedings and to the restraining order.

c. The alleged offense was not committed so "near to the Court" as to disturb its proceedings or obstruct the administration of justice, but was some 200 miles distant from the Court and at a time when, in fact, the Court was not in session.

The rights of the accused, if he were answerable to the process of the Court upon the petition for attachment, were:

(1) A strict construction of the restraining order.

(2) The restraining order must not be enlarged upon the hearing so as to include either time, place or act not strictly within the terms of the order.

(3) The charge must be clearly proved in every essential particular.

Whatever confusion in the practice this Court may find exists, in cases of this character, it seems might hereafter be prevented by enlarging the scope of the equity rules. Upon the incoming of a bill for an injunction, a bill *quia timet*, showing that the operations of an industrial enterprise had been or were about to be suspended or disturbed, the Court on finding that the proofs warranted an injunction should take exclusive possession of the property by a receiver or otherwise and operate it, so long as there was just ground for fear. In that event each party to the controversy would be required to deal directly with a representative of the sovereign power. The result might not mean compulsory arbitration, but it would be persuasive of arbitration of some kind. In any event the continued operation of the plant would conserve the public welfare and remove much of the temptation that now exists to commit perjury and abuse the processes of the law.

In conclusion we submit (1) that the United States Circuit Court for the District of Indiana was without jurisdiction in this suit to grant remedial relief to one citizen and resident of Illinois against another citizen and resident of Illinois; (2) that the relief sought by the plaintiff and against Bessette was purely remedial; (3) that the Court was without authority to enter a punitive fine against Bessette in this proceeding; (4) that the first, second and third questions certified by the Circuit Court of Appeals should be

answered in the affirmative, the last question not being material to this case; (5) that this Court should upon consideration of the whole record reverse the judgment against Bessette and remand the cause to the United States Circuit Court for the District of Indiana with directions to sustain Bessette's special plea in to the jurisdiction and for such further relief as to this Court may seem proper.

Respectfully submitted,

WILLIAM VELPEAU ROOKER,
Attorney for Appellant.

Indianapolis, Ind., October 1, 1902.